Ψυχῆς Ἰατρεῖον.

# THE Free-holders GRAND INQUEST,

Touching Our

Sovereign Lord the KING

And His

PARLIAMENT.

To which are added

## OBSERVATIONS UPON FORMS of GOVERNMENT.

Together with

Directions for Obedience to Governours in Dangerous and Doubtful Times.

By the Learned Sir *ROBERT FILMER*, Knight.

Claudian. de laudibus Stiliconis.

*Fallitur egregio quisquis sub Principe credit*
*Servitium: Nunquam* Libertas *gratior extat*
*Quàm sub Rege pio.* ——

*LONDON*,
Printed in the Year MDCLXXIX.

Augustissimi CAROLI Secundi Dei
Gratia ANGLIÆ SCOTIÆ
FRANCIÆ ET HIBERNIÆ REX.
*Bona agere & mala pati Regum est*

Ψυχῆς Ἰατρεῖον.

THE

# Free-holders

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*LONDON*,
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RS 8

Collegii Sti Augustini
apud Cantuarienses
Liber.

Manuscripts 37D53

# The Author's

# PREFACE.

THere *is a general Belief, that the Parliament of* England *was at firſt an Imitation of the Aſſembly of the Three Eſtates in* France: *therefore in order to prepare the Underſtanding in the Recerche we have in hand, it is proper to give a brief Accompt of the mode of* France *in thoſe Aſſemblies:* Scotland *and* Ireland *being alſo under the Dominion of the King of* England; *a touch of the manner of their Parliaments ſhall be by way of Preface.*

1. *In* France, *the Kings Writ goeth to the Bailiffs, Seneſchals, or Stewards of Liberties, who iſſue out Warrants to all*

*ſuch as have Fees and Lands within their Liberties, and to all Towns, requiring all ſuch as have any* Complaints, *to meet in the Principal City, there to chooſe two or three Delegates, in the name of that Province, to be preſent at the General Aſſembly.*

*At the day appointed, they meet at the Principal City of the Bailiwick. The King's Writ is read, and every man called by name, and ſworn to chooſe honeſt men, for the Good of the King and Commonwealth, to be preſent at the General Aſſembly as Delegates, faithfully to deliver their* Grievances, *and* Demands *of the Province. Then they chooſe their Delegates, and ſwear them. Next, they conſult what is neceſſary to be complained of, or what is to be deſired of the King: and of theſe things they make a Catalogue or* Index. *And becauſe every man ſhould freely propound his* Complaint *or* Demands, *there is a Cheſt placed in the*

*Town-*

*Town-Hall, into which every man may caſt his Writing. After the Catalogue is made and Signed, it is delivered to the Delegates to carry to the General Aſſembly.*

*All the Bailiwicks are divided into twelve Claſſes. To avoid confuſion, and to the end there may not be too great Delay in the Aſſembly, by the Gathering of all the Votes, every Claſſis compiles a Catalogue or Book of the* Grievances *and* Demands *of all the Bailiwicks within that Claſſis, then theſe Claſſes at the Aſſembly compoſe one Book of the* Grievances *and* Demands *of the whole Kingdom. This being the order of the Proceedings of the third Eſtate; the like order is obſerved by the Clergy and Nobility. When the three Books for the three* Eſtates *are perfected, then they preſent them to the King by their Preſidents. Firſt, the Preſident for the Clergy begins his Oration on his knees, and the King*

*commanding, he ſtands up bare-headed, and proceeds. And ſo the next Preſident for the Nobility doth the like. But the Preſident for the Commons begins and ends his Oration on his knees. Whilſt the Preſident for the Clergy ſpeaks, the reſt of that Order riſe up, and ſtand bare, till they are bid by the King to ſit down, and be covered, and ſo the like for the Nobility. But whilſt the Preſident of the Commons ſpeaks, the reſt are neither bidden to ſit, or be covered. Thus the* Grievances *and* Demands *being delivered, and left to the King and His Counſel, the General Aſſembly of the three Eſtates endeth,* Atque ita totus actus concluditur.

*Thus it appears, the General Aſſembly was but an orderly way of preſenting the Publick* Grievances *and* Demands *of the whole Kingdom, to the conſideration of the King: Not much unlike the antient Uſage of this Kingdom for a long time, when all Laws were nothing elſe but the*

*King's*

*King's Anſwers to the Petitions preſented to Him in Parliament, as is apparent by very many Statutes, Parliament-Rolls, and the Confeſſion of Sir* Edw. Coke.

2. *In* Scotland, *about twenty dayes before the Parliament begins, Proclamation is made throughout the Kingdom, to deliver in to the King's Clerk or Maſter of the Rolls, all Bills to be exhibited that Seſſions, before a certain day: then are they brought to the King, and peruſed by Him: and onely ſuch as he allows are put into the Chancellour's hand, to be propounded in Parliament, and none others: And if any man in Parliament ſpeak of another matter, than is allowed by the King, the Chancellour tells him, there is no ſuch Bill allowed by the King. When they have paſſed them for Laws, they are preſented to the King, who, with his Scepter put into His hand by the Chancellor, ratifies them, and if there be any thing the King diſlikes, they raze it out before.*

3. In

3. *In* Ireland, *the Parliament, as appears by a Statute made in the Tenth year of* Hen. 7. c. 4. *is to be after this manner: No Parliament is to be holden but at ſuch Seaſon as the King's Lieutenant and Councel there, do firſt certifie the King, under the Great Seal of that Land, the Cauſes and Conſiderations, and all ſuch Acts as they think fit ſhould paſs in the ſaid Parliament. And ſuch Cauſes and Conſiderations, and Acts affirmed by the King and his Councel to be good and expedient for that Land: And His Licence thereupon as well in affirmation of the ſaid Cauſes and Acts, as to ſummon the Parliament under His Great Seal of* England *had and obtained. That done, a Parliament to be had and holden after the Form and Effect afore rehearſed, and if any Parliament be holden in that Land contrary to the Form and Proviſion aforeſaid, it is deemed void, and of none Effect in Law. It is provided, that all ſuch Bills*

*Bills as ſhall be offered to the Parliament there; ſhall firſt be tranſmitted hither under the Great Seal of that Kingdom, and having received Allowane and Approbation here, ſhall be put under the Great Seal of this Kingdom, and ſo returned thither to be preferred to the Parliament. By a Statute of* 3 *and* 4 *of* Philip *and* Mary, *for the expounding of* Poynings *Act, it is ordered, for the King's Paſſing of the ſaid Acts in ſuch Form and Tenor as they ſhould be ſent into* England, *or elſe for the Change of them, or any part of them.*

*After this ſhorter Narrative of the Uſage of Parliaments in our Neighbour and Fellow Kingdoms, it is time the* inquiſitio magna *of our own be offered to the Verdict or Judgment of a moderate and intelligent Reader.*

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# REFLECTIONS

Concerning the

# ORIGINAL

OF

# GOVERNMENT,

Upon
- I. Ariſtotle's *Politiques.*
- II. *Mr.* Hobs's *Leviathan.*
- III. *Mr.* Milton *againſt* Salmaſius.
- IV. H. Grotius *De Jure Belli.*
- V. *Mr.* Hunton's *Treatiſe of Monarchy.*
- VI. *Another Treatiſe of* Monarchy, *by a nameleſs Author.*

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Ariſt. Pol. *Lib.* 4.

Ἡ πρώτη πολιτεία ἐν τοῖς Ἕλλησιν ἐγένετο μετὰ τὰς βασιλείας ἐκ τῶν πολεμούντων.

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*LONDON,*

Printed in the Year MDCLXXIX.

# THE ANARCHY OF A LIMITED OR MIXED Monarchy.

OR,

A Succinct Examination of the Fundamentals of *Monarchy*, both in this and other Kingdoms, as well about the Right of Power in Kings, as of the Original or Natural Liberty of the People.

*A Queſtion never yet Diſputed, though moſt neceſſary in theſe Times.*

Lucan. Lib. 3.

LIBERTAS (——) *Populi quem Regna coercent*
*Libertate Perit:——*
*——Neque enim Libertas gratior ulla eſt*
*Quàm Domino ſervire bono——* Claudian.

*LONDON*,
Printed in the Year MDCLXXIX.

# AN ADVERTISEMENT TO THE Jury-Men OF *ENGLAND*, TOUCHING WITCHES.

Together with a Difference between An { *ENGLISH* AND *HEBREW* } Witch.

*LONDON*,
Printed in the Year MDCLXXIX.

# The Argument.

A *Presentment of divers Statutes, Records, and other Precedents, explaining the Writs of Summons to* Parliament: *shewing,*

I. *That the* Commons *by their Writ are onely to Perform and Consent to the Ordinances of* Parliament.

II. *That the* Lords *or* Common Councel *by their Writ are only to Treat, and give Counsel in* Parliament.

III. *That the* King *Himself only Ordains and makes Laws, and is Supreme Judge in* Parliament.

With the Suffrages of

Hen. de Bracton.
Jo. Britton.
Tho. Egerton.
Edw. Coke.
Walter Raleigh
Rob. Cotton.
Hen. Spelman.
Jo. Glanvil.
Will. Lambard.
Rich. Crompton
Will. Cambden, and
Jo. Selden.

THE

THE

# Free-holders

## GRAND-INQUEST

Touching

## Our Sovereign Lord the *King*, and His *Parliament*.

EVery Free-holder that hath a Voice in the Election of Knights, Citizens or Burgeſſes for the Parliament, ought to know with what Power he truſts thoſe whom the chooſeth, becauſe ſuch Truſt is the Foundation of the Power of the Houſe of Commons.

A Writ from the King to the Sheriff of the County, is that which gives Authority and Commiſſion for the Free-holders to make their Election at the next County-Court-day after the Receipt of the Writ; and in the Writ there is alſo expreſſed the Duty and Power of the Knights, Citizens and Burgeſſes that are there elected.

The means to know what Truſt, or Authority the Country or Free-holders confer, or beſtow by their Election, is in this, as in other like Caſes, to have an eye to the words of the Commiſſion, or Writ it ſelf: thereby it may be ſeen whether that which the Houſe of Commons doth act be within the Limit of their Commiſſion: greater or other Truſt than is compriſed in the Body of the Writ, the Free-holders do not, or cannot give if they obey the Writ: the Writ being Latine, and not extant in Engliſh, few Free-holders underſtand it, and fewer obſerve it; I have rendred it in Latine and Engliſh.

Rex Vicecomiti ſalut'. *&c.*

*QVia de Adviſamento & Aſſenſu Concilii noſtri pro quibuſdam arduis & urgentibus Negotiis, Nos, ſtatum, & defenſionem regni noſtri Angliæ, & Eccleſiæ Anglicanæ concernen', quoddam Parliamentum noſtrum apud Civitatem noſtram Weſt. duodecimo die Novembris prox. futur' teneri ordinavimus, & ibid. cum Prælatis Magnatibus & Proceribus dicti regni noſtri colloquium habere & tract: Tibi præcipimus firmiter injungentes quod facta proclam. in prox. comitat' tuo poſt receptionem hujus brevis noſtri tenend' die & loco prædict. duos milit' gladiis cinct' magis idoneos & diſcretos comit' prædicti, & de qualib. civitate com' illius duos Cives, & de quolibet Burgo duos Burgenſes de diſcretior' & magis ſufficientibus libere & indifferenter per illos qui proclam' hujuſmodi interfuerint juxta formam ſtatutorum inde edit' & provis' eligi, & nomina eorundum milit', civium & Burgenſium, ſic electorum in quibuſdam indentur' inter te & illos qui hujuſmodi election' interfuerint, inde conficiend'*

*end' ſive hujuſmodi electi præſentes fuerint vel abſentes, inſeri: eósque ad dict' diem & locum venire fac'. Ita quod iidem milites plenam & ſufficientem poteſtatem pro ſe & communitate comit' prædicti, ac dict' Cives & Burgenſes pro ſe & communitat' Civitatum & Burgorum prædictorum diviſim ab ipſis habeant, ad faciendum & conſentiendum his quæ tunc ibid' de communi Conſilio dicti reg. noſtri (favente Deo) contigerint ordinari ſuper negotiis ante dictis: Ita quod pro defectu poteſtatis hujuſmodi, ſeu propter improvidam electionem milit' civium aut Burgenſium prædictorum, dicta negotia infecta non remaneant quoviſmodo. Nolumus autem quod tu nec aliquis alius vic' dicti reg. noſtri aliqualiter ſit electus. Et electionem illam in pleno comitatu factam, diſtincte & aperte ſub ſigillo tuo & ſigillis eorum qui electioni illi interfuerint, nobis in cancellar' noſtram ad dict' diem & locum certifices indilate, remittens nobis alteram partem indenturarum prædictarum præſentibus conſut' una cum hoc breve.* Teſte meipſo apud Weſtmon.

*The King to the Sheriff of* *Greeting.*

WHereas by the Advice and Conſent of our 'Councel, for certain difficult and urgent 'Buſineſſes concerning Us, the State and Defence of 'our Kingdom of *England*, and the *Engliſh* Church: 'We have ordained a certain Parliament of ours, to 'be held at Our City of the day 'of next enſuing, and there to have 'Conference, and to treat with the Prelates, Great 'men and Peers of our ſaid Kingdom. We com-'mand and ſtraitly enjoyn you, that making Procla-'mation at the next County-Court after the Re-'ceipt of this our Writ, to be holden the day, and

'place aforeſaid: You cauſe two Knights, girt with 'Swords, the moſt fit, and diſcreet of the County 'aforeſaid: and of every City of that County two 'Citizens; of every Borough, two Burgeſſes of the 'diſcreeter and moſt ſufficient; to be freely, and in-'differently choſen by them who ſhall be preſent at 'ſuch Proclamation, according to the Tenor of the 'Statutes in that caſe made and provided: and the 'Names of the ſaid Knights, Citizens and Burgeſſes 'ſo choſen, to be inſerted in certain Indentures to be 'then made between you, and thoſe that ſhall be pre-'ſent at ſuch Election, whether the Parties ſo elected 'be preſent, or abſent: and ſhall make them to come 'at the ſaid day, and Place: ſo that the ſaid Knights 'for themſelves, and for the County aforeſaid, and 'the ſaid Citizens, and Burgeſſes for themſelves, and 'the Commonalty of the aforeſaid Cities, and Bo-'roughs, may have ſeverally from them, full and 'ſufficient Power to *Perform*, and to *Conſent* to 'thoſe things which then by the Favour of God 'ſhall there happen to be ordained by the *Common-'Councel* of our ſaid Kingdom, concerning the Buſi-'neſſes aforeſaid: So that the Buſineſs may not by 'any means remain undone for want of ſuch Power, 'or by reaſon of the improvident Election of the 'aforeſaid Knights, Citizens, and Burgeſſes. But 'We will not in any caſe you or any other Sheriff 'of Our ſaid Kingdom ſhall be elected; And at 'the Day and Place aforeſaid, the ſaid Election 'made in the full County-Court, you ſhall certifie 'without Delay to Us in our Chancery under your 'Seal, and the Seals of them which ſhall be preſent 'at that Election, ſending back unto Us the other 'part of the Indenture aforeſaid affiled to theſe Pre-

'ſents,

'ſents, together with this Writ. *Witneſs* Our Self *at Weſtminſter.*

By this Writ we do not find that the Commons are called to be any part of the *Common Councel* of the Kingdom, or of the *Supream Court of Judicature*, or to have any part of the *Legiſlative Power*, or to Conſult *de arduis regni negotiis*, of the difficult Buſineſſes of the Kingdom. The Writ only ſayes, the King would have *Conference*, and *Treat* with the *Prelates*, *Great men*, and *Peers*: but not a word of Treating or Conference with the Commons; The Houſe of Commons which doth not miniſter an Oath, nor fine, nor impriſon any, but their own Members (and that but of late in ſome Caſes) cannot properly be ſaid to be a Court at all; much leſs to be a part of the Supream Court, or higheſt Judicature of the Kingdom: The conſtant Cuſtom, even to this day, for the Members of the Houſe of Commons to ſtand bare, with their Hats in their Hands in the Preſence of the Lords, while the Lords ſit covered at all Conferences, is a viſible argument, that the Lords and Commons are not fellow Commiſſioners, or fellow Counſellors of the Kingdom.

The Duty of Knights, Citizens, and Burgeſſes, mentioned in the Writ, is only *ad Faciendum, & Conſentiendum*, to *Perform* and to *Conſent* to ſuch things as ſhould be ordained by the *Common Councel* of the Kingdom; there is not ſo much mentioned in the Writ as a Power in the Commons to diſſent. When a man is bound to appear in a Court of Juſtice, the words are, *ad Faciendum & recipiendum quod ei per curiam injungetur*: which ſhews, that this word *Faciendum* is uſed as a Term in Law to ſignifie *to give Obedience*: For this, we meet with a Precedent

even as ancient as the Parliament-Writ it ſelf, and it is concerning Proceedings in Parliament. 33. Ed. 1. *Dominus Rex mandavit vicecom' quod &c. ſummon' Nicolaum de Segrave, & ex parte Domini regis firmiter ei injungeret, quod eſſet coram Domino Rege in proximo Parl. &c. ad audiendum voluntatem ipſius Domini Regis &c. Et ad Faciendum & recipiendum ulterius quod curia Domini Regis conſideraret in Præmiſſis:* 'Our Lord "the King commands the Sheriff to ſummon *Nicho-* "*las Segrave* to appear before the Lord our King in the "next Parliament to hear the Will of the Lord our "King himſelf, and to Perform and receive what the "Kings Court ſhall further conſider of the Premiſes.

Sir *Ed. Coke* to prove the Clergy hath no Voice in Parliament; ſaith, that by the Words of their Writ *their Conſent was only to ſuch things as were ordained by the Common Councel of the Realm.* If this argument of his be good, it will deny alſo Voices to the Commons in Parliament, for in their Writ are the ſelf-ſame words, *viz.* to *conſent to ſuch things as were ordained by the Common Councel* of the Kingdom. Sir *Edw. Coke* concludes, that the *Procuratores Cleri, have many times appeared in Parliament*, as *Spiritual Aſſiſtants, to Conſider, Conſult, and to Conſent*; but never had voice there; how they could conſult, and Conſent without Voices he doth not ſhew: Though *the Clergy* (as he ſaith) *oft appeared in Parliament*, yet was it only *ad conſentiendum*, as I take it, and not *ad faciendum*, for the Word *Faciendum* is omitted in their Writ; the cauſe, as I conceive is, the Clergy, though they were to *aſſent*, yet by reaſon of *Clerical Exemptions*, they were not required to *Perform* all the Ordinances or Acts of Parliament.

But ſome may think, though the Writ doth not expreſs a Calling of the Knights, Citizens, and

Bur-

Burgeſſes to be part of the *Common Councel of the Kingdom*; yet it ſuppoſeth it a thing granted, and not to be queſtioned, but that they are a part of the *Common Councel.*

Indeed if their Writ had not mentioned the Calling of Prelates, Great men, and Peers to Councel, there might have been a little better colour for ſuch a Suppoſition: but the Truth is, ſuch a Suppoſition doth make the Writ it ſelf vain and idle; for it is a ſenſeleſs thing to bid men aſſent to that which they have already ordained: ſince ordaining is an Aſſenting, and more than an Aſſenting.

For clearing the meaning and ſenſe of the Writ, and Satisfaction of ſuch as think it impoſſible but that the Commons of *England* have alwayes been a part of the *Common Councel of the Kingdom*, I ſhall inſiſt upon theſe Points. 1. That anciently the *Barons of England were the Common Councel of the Kingdom.* 2. That until the time of *Hen.* 1. the Commons were not called to Parliament. 3. Though the Commons were called by *Hen.* 1. yet they were not conſtantly called, nor yet regularly elected by Writ until *Hen.* 3. time.

For the firſt point M. *Cambden* in his *Britania*, doth teach us, that *in the time of the Engliſh Saxons, and in the enſuing Age*, a *Parliament was called, Communo concilium*, which was (ſaith he) *Præſentia Regis, Prælatorum, Procerumque collectorum*, the Preſence of the King, Prelates and Peers aſſembled; No mention of the Commons: the Prelates and Peers were all Barons.

The Author of the Chronicle of the Church of *Lichfield*, cited by M. *Selden*, ſaith, *Poſtquam Rex Edvardus, &c. Concilio Baronum Angliæ*, &c. *After King* Edward *was King; by the Councel of the Barons of England he revived a* *Apud Selden.*

*Law which had layen aſleep threeſcore and ſeven years: and this Law was called the Law of St.* Edward *the King.*

In the ſame Chronicle it is ſaid, that *Will.* the Conquerour *anno regni ſui quarto apud Londin'*, had *Concilium Baronum Suorum, a Councel of his Barons.* And of this Parliament it is, that his Son *Hen.* 1. ſpeaks, ſaying, *I reſtore you the Laws of* King Edward *the Confeſſor, with thoſe amendments wherewith my Father amended them by the Councel of his Barons.*

In the fifth year, as M. *Selden* thinks, of the Conquerour, was a *Parliament* or *Principum conventus*, an *Aſſembly of Earls and Barons* at *Pinenden Heath in* Kent, *in the Cauſe between* Lanfranke *the Arch-biſhop of* Canterbury, *and* Odo *Earl of* Kent. The King gave Commiſſion to *Godfrid*, then Biſhop of *Conſtance* in *Normandy*, to repreſent *His* own Perſon for Hearing the Controverſie (as ſaith M. *Lambard*;) and cauſed *Egelrick* the Biſhop of *Chicheſter* (an aged man, ſingularly commended for Skill in the Laws and Cuſtomes of the Realm) to be brought thither in a Wagon for his Aſſiſtance in Councel: Commanded *Haymo* the Sheriff of *Kent* to ſummon the whole County to give in Evidence: three whole dayes ſpent in Debate: in the End *Lanfranke* and the Biſhop of *Rocheſter* were reſtored to the Poſſeſſion of *Detling* and other Lands which *Odo* hath withholden.

*Apud Selden.* 21. *Ed.* 3. *fol.* 60. There is mention of a Parliament held under the ſame King *William* the Conquerour, wherein *all the Biſhops of the Land, Earls and* Barons, *made an Ordinance touching the Exemption of the Abby of* Bury *from the Biſhops of* Norwich.

In the tenth year of the Conquerour: *Epiſcopi, Comites, & Barones regni regia poteſtate ad univerſalem Syno-*

*Synodum pro cauſis audiendis & tractandis convocati*, ſaith the Book of *Weſtminſter*.

In the 2 year of *William* 2. there was a Parliament *de cunctis regni Principibus*; another which had *quoſq; regni proceres*: *All the Peers of the Kingdom.* *Selden.*

In the ſeventh year was a Parliament at *Rockingham-Caſtle* in Northampton-ſhire. *Epiſcopis, Abbatibus cunctique regni Principibus una coeuntibus.*

A year or two after, the ſame King, *de ſtatu regni acturus*, &c. *called thither, by the Command of his Writ, the Biſhops, Abbots, and all the Peers of the Kingdom.* *Selden.*

At the Coronation of *Hen.* 1. All the People of the Kingdom of *England* were called, and Laws were then made; but it was *Per Commune Concilium Baronum meorum*, by the Common Councel of my Barons. *Selden.*

In his third year, the *Peers of the Kingdom* were called without any mention of the Commons: and another a while after, *conſenſu Comitum & Baronum*, by the conſent of Earls and Barons. *Selden.*

*Florentius Wigorienſis* ſaith, theſe are Statutes which *Anſelme* and all the other Biſhops in the Preſence of King *Henry*, by *the aſſent of his Barons ordained:* and in his tenth year, of *Earls* and *Peers*; and in his 23. of *Earls* and *Barons*. In the year following the ſame King held a Parliament, or great Councel with *His Barons Spiritual and Temporal.*

King *Hen.* 2. in his tenth year had a great Councel or Parliament at *Clarendon*, which was an Aſſembly of *Prelates and Peers.*

22. *Hen.* 2. ſaith *Hovenden*, was a great Councel at *Nottingham*, and by the *Common Councel of the Archbiſhops, Biſhops, Earls and Barons, the Kingdom*

*dom was divided into ſix parts.* And again, *Hovenden* ſaith, that the ſame King at *Windſor* (*apud Windeſhores*) *Communi Concilio* of *Biſhops*, *Earls*, *and* Barons, *divided* England *into four Parts.* And in his 21 year a Parliament at *Windſor* of *Biſhops*, *Earls and Barons.* And another of like Perſons at *Northampton.*

King *Richard* 1. had a Parliament at *Nottingham*, in his fifth year, of *Biſhops*, *Earls*, *and Barons:* This Parliament laſted but four days, yet much was done in it: the firſt day the King diſſeiſeth *Gerard de Canvil* of the Sherifwick of *Lincoln*, and *Hugh Bardolph* of the Caſtle and Sherifwick of *York.* The ſecond day he required judgment againſt his Brother *John*, who was afterwards King; and *Hugh de Novant* Biſhop of *Coventry.* The third day was granted to the King of every Plow-land in *England* 2 *s.* He required alſo the third part of the Service of every Knights Fee for his Attendance into *Normandy*, and all the Wooll that year of the Monks *Ciſteaux*, which, for that it was grievous, and unſupportable, they fine for Mony. The laſt day was for Hearing of Grievances: and ſo the Parliament brake up; And the ſame year held another at *Northampton* of the *Nobles of the Realm.*

King *John*, in his fifth year, *He and his Great men met*, *Rex & Magnates convenerunt*: and the Roll of that year hath *Commune Concilium Baronum Meorum*, the Common Councel of my Barons at *Wincheſter.* *Selden.*

In the ſixth year of King *Henry* 3. the *Nobles granted to the King, of every Knights Fee, two Marks in Silver.*

In

In the ſeventh year he had a Parliament at *London*, an *Aſſembly of* Barons. In his thirteenth year an Aſſembly of the *Lords at Weſtminſter*. In his fifteenth year of *Nobles both Spiritual and Temporal.*

*M. Par.* ſaith that 20. *H.* 3. *Congregati ſunt Magnates ad colloquium de negotiis regni tractaturi*, the Great men were called to confer and treat of the Buſineſs of the Kingdom. And at *Merton*, *Our Lord the King granted by the Conſent of his* Great men, *That hereafter Uſury ſhould not run againſt a Ward from the Death of his Anceſtor.*

21. *Hen.* 3. The King ſent his *Royal Writs, commanding all belonging to His Kingdom*, that is to ſay, *Arch-biſhops*, Biſhops, *Abbots and Priors inſtalled, Earls and* Barons, *that they ſhould all meet at* London, *to treat of the Kings* Buſineſs *touching the whole Kingdom:* and at the day prefixed, the *whole multitude of the Nobles of the Kingdom met at* London, ſaith *Mat. Weſtminſter.*

In his 21 year, *At the Requeſt, and by the Councel of the Lords, the Charters were confirmed.*

22. Hen. 3. At *Wincheſter the King ſent his Royal Writs to Arch-biſhops*, Biſhops, *Priors, Earls and* Barons, *to treat of* Buſineſs *concerning the whole Kingdome.*

32. Hen. 3. *The King commanded all the Nobility of the whole Kingdom to be called to treat of the State of His Kingdom. Mat. Weſtm'.*

49. *Hen.* 3. The King had a Treaty at *Oxford* with the *Peers of the Kingdom. M. Weſtminſter.*

At a Parliament at *Marlborow* 55. *Hen.* 3. Statutes were made *by the Aſſent of Earls and* Barons.

Here

Here the Place of *Bracton*, Chief Juſtice in this Kings time, is worth the obſerving; and the rather for that it is much inſiſted on of late, to make for Parliaments being above the King. The words in *Bracton* are, *The King hath a Superiour, God; alſo the Law by which he is made King; alſo his Court*, viz. *the Earls and Barons.* The Court that was ſaid in thoſe days to be above the King was a Court of *Earls and Barons*, not a Word of the Commons, or the repreſentative Body of the Kingdom being any part of the Superiour Court. Now for the true Senſe of *Bractons* words, how the Law, and the Court of *Earls and Barons*, are the Kings Superiours; they muſt of Neceſſity be underſtood to be Superiours, ſo far only as to adviſe, and direct the King out of his own Grace and Good Will only: which appears plainly by the Words of *Bracton* himſelf, where, ſpeaking of the King, he reſolves thus, *Nec poteſt ei neceſſitatem aliquis imponere quod injuriam ſuam corrigat & emendat, cum ſuperiorem non habeat niſi Deum; & ſatis ei erit ad pœnam, quod Dominum expectat ultorem.* Nor can any man put a neceſſity upon Him to correct and amend his Injury unleſs he will himſelf, ſince he hath no Superiour but God; it will be ſufficient Puniſhment for him, to expect the Lord an avenger. Here the ſame man, who ſpeaking according to ſome mens Opinion ſaith, the *Law and Court of Earls and Barons* are ſuperiour to the *King*; in this place tells us himſelf, the *King hath no Superiour but God*: the Difference is eaſily reconciled; according to the Diſtinction of the School-men *the King is free from the Coactive Power of Laws or Councellors*: but *may be ſubject to their Directive Power*, according to his own Will: that is God can only compell, but the

Law

Law and his Courts may adviſe Him. *Rot. Parliament.* 1 *Hen.* 4. *nu.* 79. the Commons expreſly affirm, *Judgment in Parliament belongs to the King and Lords.*

Theſe Precedents ſhew, that from the Conqueſt untill a great part of *Henry* the Third's Reign (in whoſe dayes it is thought the Writ for Election of Knights was framed) which is about two hundred years, and above a third part of the time ſince the Conqueſt to our dayes, the *Barons* made the *Parliament* or *Common Councel of the Kingdom*: under the name of *Barons*; not only the *Earls*, but the *Biſhops* alſo were Comprehended, for the Conquerour made the Biſhops *Barons*. Therefore it is no ſuch great Wonder, that in the Writ, we find the *Lords* only to be the *Counſellours*, and the *Commons* Called only to *perform* and *conſent* to the *Ordinances*.

Thoſe there be who ſeem to believe that under the word *Barons*, anciently the Lords of Court-Barons were Comprehended, and that they were Called to Parliament as *Barons*; But if this could be proved to have been at any time true, yet thoſe Lords of Court-Barons were not the repreſentative Body of the Commons of *England*, except it can be alſo proved that the Commons, or Free-holders of the Kingdome choſe ſuch Lords of Court-Barons to be preſent in Parliament. The Lords of Manors came not at firſt by Election of the People, as Sir *Edw. Coke*, treating of the inſtitution of Court-Barons, reſolves us in theſe words: *By the Laws and Ordinances of ancient Kings, and eſpecially of King* Alfred, *it appeareth, that the firſt Kings of this Realm had all the Lands of* England *in Demean*; and *les grand Manors and Royalties they reſerved to themſelves, and*

*and of the remnant they, for the Defence of the Realm, enfeoffed the* Barons *of the Realm with ſuch Juriſdiction as the Court-*Baron *now hath.* Coke's Inſtitutes, Firſt part, Fol. 58.

Here, by the way, I cannot but note that if the *firſt Kings had all the Lands of* England *in Demean*, as Sir *Edward Coke* ſaith they had; And if the firſt Kings were choſen by the People, (as many think they were) then ſurely our Forefathers were a very bountiful (if not a prodigal) People, to give all the Lands of the whole Kingdom to their Kings, with Liberty for them to keep what they pleaſed, and to give the Remainder to their Subjects, clogg'd and cumbred with a Condition to defend the Realm: This is but an ill ſign of a limited Monarchy by original Conſtitution or Contract. But to conclude the former Point, Sir *Edward Coke*'s Opinion is, that *in the ancient Laws, under the name of* Barons *were compriſed all the Nobility.*

This Doctrine of the *Barons* being the *Common Councel*, doth diſpleaſe many, and is denied, as tending to the Diſparagement of the Commons, and to the Diſcredit, and Confutation of their Opinion, who teach, that the *Commons are aſſigned Councellors to the King by the People*, therefore I will call in Mr. *Pryn* to help us with his Teſtimony: He in his Book of *Treachery and Diſloyalty &c.* proves that before the Conqueſt, by the Laws of *Edward the Confeſſor*, cap. 17. *The King by his Oaths was to do Juſtice by the Councel of the Nobles of his Realm.* He alſo reſolves, that the *Earls and Barons in Parliament are above the King, and ought to bridle him, when he exorbitates from the Laws.* He further tells us, the *Peers and Prelates have oft tranſlated the Crown from the right Heir.*

1. *Ele-*

1. *Electing and Crowning* Edward, *who was illegitimate; and putting by* Ethelred, *the right* Heir *after* Edgars *deceaſe.*

2. *Electing and Crowning* Canutus, *a meer* Foreigner, *in oppoſition to* Edmund *the right Heir to King* Ethelred.

3. Harold *and* Hardiknute, *both elected Kings ſucceſſively without title;* Edmund *and* Alfred *the right* Heirs *being diſpoſſeſſed.*

4. *The Engliſh Nobility, upon the Death of* Harold, *enacted that none of the Daniſh bloud ſhould any more reign over them.*

5. Edgar Etheling, *who had beſt Title, was rejected; and* Harold *elected and crowned King.*

6. In the ſecond and third year of *Edw.* 2. the *Peers and Nobles of the Land, ſeeing themſelves contemned, entreated the King to manage the Affairs of the Kingdome by the Councel of his Barons. He gave his Aſſent, and ſware to ratifie what the Nobles ordained;* and one of their Articles was, that *he would thenceforward order all the Affairs of the Kingdom by the Councel of his Clergy and Lords.*

7. William Rufus, *finding the greateſt part of the Nobles againſt him, ſware to* Lanfranke *that if they would chooſe him for King, he would abrogate their overhard Laws.*

8. The Beginning, ſaith Mr. *Pryn,* of the Charter of *Hen.* 1. is obſervable; *Henry by the Grace of God of* England, &c. *Know ye, That by the Mercy of God and Common Councel of the Barons of the Kingdom, I am Crowned King.*

9. Maud *the Empreſs, the right* Heir, *was put by the Crown by the Prelates and* Barons, and *Stephen, Earl of* Mortain, *who had no good Title, aſſembling the*

Biſh-

*Biſhops and Peers, promiſing the amendment of the Laws according to all their Pleaſures and Liking, was by them all proclaimed King.*

10. Lewis *of* France *Crowned King by the* Barons, *in ſtead of King* John.

All theſe Teſtimonies from Mr. *Pryn* may ſatisfie, that anciently the *Barons* were the *Common Councel, or Parliament of England.* And if Mr. *Pryn* could have found ſo much Antiquity, and Proof for the Knights, Citizens, and Burgeſſes, being of the *Common Councel*: I make no doubt but we ſhould have heard from him in Capital Characters: but alas! he meets not with ſo much as theſe Names in thoſe elder Ages. He dares not ſay the *Barons* were aſſigned by the People, *Councellors to the King*; for he tells us, *every Baron in Parliament doth repreſent his own Perſon, and ſpeaketh in behalf of himſelf alone*; but *in the Knights, Citizens, and Burgeſſes, are repreſented the Commons of the whole Realm*: therefore *every one of the Commons hath a greater voice in Parliament than the greateſt Earl in England.* Nevertheleſs Maſter *Pryn* will be very well content if we will admit and ſwallow theſe Parliaments of *Barons* for the repreſentative Body of the Kingdom; and to that Purpoſe he cites them, or to no Purpoſe at all. But to prove the Treachery and Diſloyalty of Popiſh Parliaments, Prelates, and Peers, to their Kings: which is the main Point, that Maſter *Pryn* by the Title of his Book is to make good, and to prove.

As to the ſecond Point; which is, That untill the time of *Hen.* 1. the Commons were not called to Parliament: beſides, the general Silence of Antiquity which never makes mention of the Commons Coming to Parliament untill that time; our Hiſtories

ſay

ſay, *before his time only certain of the Nobility were called to Conſultation about the moſt important affairs of the State: He cauſed the Commons alſo to be aſſembled by Knights, Citizens, and* Burgeſſes *of their own Appointment*: much to the ſame Purpoſe writes Sir *Walter Raleigh*, ſaying, *it is held that the Kings of* England *had no formal Parliaments till about the* 18*th year of King* Hen. 1. *For in his Third year, for the Marriage of his Daughter, the King raiſed a Tax upon every Hide of Land, by the Advice of His Privy Councel alone.* And the Subjects (ſaith he) *ſoon after this Parliament was eſtabliſhed, began to ſtand upon Terms with their King, and drew from him by ſtrong hand, and their Swords, their* Great Charter; *it was after the eſtabliſhment of the Parliament, by colour of it, that they had ſo great Daring.* If any deſire to know the cauſe why *Hen.* 1, called the People to Parliament, it was upon no very good Occaſion, if we believe Sir *Walter Raleigh*; The *Grand Charter* (ſaith he) *was not originally granted Regally and freely, for King* Hen. 1. *did but uſurp the Kingdom, and therefore the better to aſſure himſelf againſt* Robert *his elder Brother, he flattered the People with thoſe Charters: yea,* King John *that confirmed them, had the like Reſpect: for* Arthur *D. of* Britain *was the undoubted Heir of the Crown, upon whom* John *uſurped: ſo theſe Charters had their original from Kings*, de facto, *but not* de jure: and then afterwards his Concluſion is, that *the Great Charter had firſt an obſcure Birth by Uſurpation, and was foſtered, and ſhewed to the World by Rebellion*: in brief, the King called the People to Parliament, and granted them *Magna Charta*; that they might confirm to him the Crown.

The third Point conſiſts of two parts; Firſt, that the Commons were not called unto Parliament until

*Hen.* 3. dayes, this appears by divers of the Precedents formerly cited, to prove that the *Barons were the Common Councel.* For though *Hen.* 1. called all the People of the Land to His Coronation, and again in the 15. or 18. year of his Reign; yet alwayes he did not ſo; neither many of thoſe Kings that did ſucceed him, as appeareth before.

Secondly, for calling the Commons by Writ, I find it acknowledged in a Book, intituled, *The Privilege and Practice of Parliaments*, in theſe words; *In ancient times after the King had ſummoned His Parliament, innumerable multitudes of People did make their Acceſs thereunto, pretending that Privilege of Right to belong to them.* But *King* Hen. 3. *having Experience of the Miſchief, and inconveniences by occaſion of ſuch popular Confuſion, did take order that none might come to His Parliament but thoſe who were ſpecially ſummoned.* To this purpoſe it is obſerved by Maſter *Selden*, *that the firſt Writs we find accompanied with other Circumſtances of a Summons to Parliament, as well for the Commons as Lords, is in the* 49 *of Hen.* 3. In the like manner Maſter *Cambden* ſpeaking of the Dignity of *Barons* hath theſe Words: *King* Hen. 3. *out of a great Multitude which were ſeditious and turbulent, called the very beſt by Writ or Summons to Parliament; for he, after many Troubles and Vexations between the King himſelf, and* Simon de Monefort, *with other Barons; and after appeaſed: did decree and ordain, That all thoſe Earls and Barons unto whom the King himſelf vouchſafed to direct His Writs of Summons ſhould come to his Parliament, and no others: but that which he began a little before his Death*, Edward 1. *and his Succeſſours conſtantly obſerved and continued. The ſaid prudent King* Edward

*ſum-*

*ſummoned always thoſe of ancient Families, that were moſt wiſe, to His Parliament; and omitted their Sons after their Death, if they were not anſwerable to their Parents in Underſtanding.* Alſo Maſter *Cambden* in another place ſaith, that in the time of *Edw.* 1. *ſelect men for Wiſdom and Worth among the Gentry were called to Parliament, and their Poſterity omitted if they were defective therein.* *Cambden.*

As the power of ſending Writs of Summons for Elections, was firſt exerciſed by *Hen.* 3. ſo ſucceeding *Kings* did regulate the Elections upon ſuch Writs, as doth appear by ſeveral Statutes, which all ſpeak in the Name and Power of the *Kings* themſelves; for ſuch was the Language of our Fore-fathers.

In 5 *Ric.* 2. *c.* 4. theſe be the words, *The King Willeth and Commandeth all Perſons which ſhall have Summons to come to Parliament; and every Perſon that doth abſent himſelf (except he may reaſonably and honeſtly excuſe him to* Our Lord the King *) ſhall be amerced, and otherwiſe puniſhed.*

7 *Hen.* 4. *c.* 15. *Our* Lord the King, *at the grievous complaint of his Commons, of the undue Election of the Knights of Counties, ſometimes made of affection of Sheriffs, and otherwiſe againſt the Form of the Writs, to the great ſlander of the Counties, &c.* Our Lord the King, *willing therein to provide Remedy, by the Aſſent of the Lords and Commons,* Hath Ordained, *That Election ſhall be made in the full County-Court, and that all that be there preſent, as well Suitors as others, ſhall proceed to the Election freely, notwithſtanding any Requeſt, or Command to the contrary.*

11 *Hen.* 4. *c.* 1. *Our* Lord the King *Ordained, that a Sheriff that maketh an undue Return, &c. ſhall incur the Penalty of* 100 l. *to be paid to* Our Lord the King.

1 *H.* 5. *c.* 1. *Our* Lord the King, *by the Advice and Aſſent of the Lords, and the ſpecial Inſtance and Requeſt of the Commons*, Ordained, *that the Knights of the Shire be not choſen, unleſs they be reſiant within the Shire the day of the date of the Writ: and that Citizens and* Burgeſſes *be reſiant, dwelling, and free in the the ſame Cities and Burroughs, and no others, in any wiſe.*

6 *Hen.* 6. *c.* 4. *Our* Lord the King, *willing to provide remedy for Knights choſen for Parliament, and Sheriffs*, Hath Ordained, *that they ſhall have their Anſwer, and traverſe to Inqueſt of Office found againſt them.*

8 *Hen.* 6. *c.* 7. *Whereas Elections of Knights have been made by great Out-rages, and exceſſive number of People, of which moſt part was of People of no value, whereof every of them pretend a Voice equivalent to Worthy Knights, and Eſquires; whereby Man-ſlaughters, Riots, and Diviſions among Gentlemen ſhall likely be:* Our Lord the King hath Ordained, *That Knights of Shires be choſen by People dwelling in the Counties, every of them having Lands or Tenements to the value of* 2 l. *the year at the leaſt, and that he that ſhall be choſen, ſhall be dwelling and reſiant within the Counties.*

10. *H.* 6. Our Lord the King ordained, *that Knights be choſen by People dwelling, and having* 2 l. *by the year within the ſame County.*

11 *H.* 6. *c.* 11. The King, *willing to provide for the Eaſe of them that come to the Parliaments and Councels of the* King *by his Commandment*, hath ordained, *that if any Aſſault or Fray be made on them that come to Parliament, or other Councel of the* King; *the Party which made any ſuch Affray or Aſſault, ſhall pay double Damages, and make Fine and Ranſom at the Kings Will.*

23. *H.* 6.

23. *H.* 6. *c.* 15. The King *conſidering the Statutes of* 1 *H.* 5. *c.* 1. *&* 8. *Hen.* 6. *c.* 7. *and the Defaults of Sheriffs in returning Knights, Citizens, and Burgeſſes,* ordained;

1. *That the ſaid Statutes ſhould be duely kept.*

2. *That the Sheriffs ſhall deliver Precepts to Maiors, and Bayliffs to chuſe Citizens and Burgeſſes.*

3. *The Penalty of* 100 *l. for a Sheriff making an untrue Return concerning the election of Knights, Citizens and Burgeſſes.*

4. *The Penalty of* 40 l, *for Maiors or Bayliffs, making untrue Returns.*

5. *Due Election of Knights muſt be in the full County-Court, between the Hours of Eight and Eleven before noon.*

6. *The Party muſt begin his Suit within* 3 *Moneths after the Parliament began.*

7. *Knights of the Shire ſhall be notable Knights of the County, or ſuch notable Eſquires, or Gentlemen born of the ſaid Counties as ſhall be able to be Knights, and no man to be ſuch Knight which ſtandeth in the Degree of a Yeoman, and under.*

The laſt thing I obſerve in the Writ for Election of Members for Parliament, is, That by the expreſs words of the Writ, Citizens and Burgeſſes for the Parliament were eligible at the County-Court as well as Knights of the Shire; and that not only Free-holders, but all others, whoſoever were preſent at the County-Court, had Voices in ſuch Elections: ſee the Stat. 7. *Hen.* 4. cap. 15.

I have the longer inſiſted on the Examination of the Writ, being the Power, and Actions of the Houſe of *Commons* are principally juſtified by the *Truſt* which the Free-holders commit unto them by virtue of this Writ.

I would not be underſtood to determine what Power the Houſe of Commons doth, or may exerciſe if the King pleaſe: I confine my ſelf only to the Power in the Writ. I am not ignorant that King *Hen.* 7. in the Cauſe of the Duke of *Britain*, and King *James* in the Buſineſs of the *Palatinate* asked the Councel of the Houſe of Commons; and not only the Houſe of Commons, but every Subject in particular by Duty and Allegiance, is bound to give his beſt Advice to his Sovereign, when he is thought worthy to have his Councel asked.

13. *Edw.* 3. *nu.* 10. *All the Merchants of* England *were ſummoned by Writ to appear at* Weſtminſter *in proper Perſon, to confer upon great buſineſs concerning the Kings Honour, the Salvation of the Realm, and of themſelves.*

In Paſſages of publick Councel *it is obſervable* (ſaith Sir *Rob. Cotton*) *that in ancient times the Kings of* England *did entertain the Commons with weighty Cauſes, thereby to apt and bind them to a readineſs of Charge; and the Commons to ſhun* Expence *have warily avoided to give Advice.* *Cotton.*

13. *Edw.* 3. The Lords and Commons were called to conſult how the domeſtick Quiet may be preſerved, the Marches of *Scotland* defended, and the Sea ſecured from Enemies. The Peers and Commons having apart conſulted, the Commons deſired *Not to be charged to Councel of things of which they had no Cogniſance; de queux ils n' ont pas de Cogniſance.*

21. *Edw.* 3. Juſtice *Thorp* declaring to the Peers and Commons that the French War began by their Advice: the Truce after by their Aſſent accepted, and now ended: *the Kings Pleaſure was* to have their

their Counſel in the Proſecution: the Commons, being commanded to aſſemble themſelves, and when they were agreed, to give notice to the King, and the Lords of the Councel; after four days Conſultation, *Humbly deſire of the King that he would be adviſed therein by the Lords and others of more Experience than themſelves in ſuch Affairs.*

6. *Ric.* 2. The Parliament was called to conſult whether the King ſhould go in Perſon to reſcue *Gaunt*, or ſend an Army. The Commons, after two dayes Debate, crave a Conference with the Lords, and Sir *Thomas Puckering* (their Speaker) proteſts, that *Councels for War did aptly belong to the King and His Lords*; yet ſince the Commons were commanded to give their Advice, *they humbly wiſhed a Voyage by the King.*

7. *Ric.* 2. At the ſecond Seſſion, the Commons are willed to Adviſe upon View of Articles of Peace with the French; whether War or ſuch Amity ſhould be accepted; *they modeſtly excuſe themſelves, as too weak to Counſel in ſo weighty Cauſes.* But charged again, as they did tender their Honour and the Right of the King; they make their Anſwer, giving their Opinions, *rather for Peace, than War.*

For fuller Manifeſtation of what hath been ſaid touching the Calling, Election, and Power of the Commons in Parliament, it is behooful to obſerve ſome Points delivered by Sir *Edw. Coke* in his Treatiſe of the Juriſdiction of Parliaments; where,

Firſt, he fairly begins, and lays his Foundation, that *the High Court of Parliament conſiſteth of the Kings Majeſty ſitting there, and of the three Eſtates*;

1. *The Lords Spiritual.*
2. *The Lords Temporal.*

3. *And the Commons.*

Hence it is to be gathered, that truly and properly it cannot be called the *High Court of Parliament*, but whilſt the King is ſitting there in Perſon: ſo that the Queſtion now a-days, whether the *Parliament be above the King*, is either falſe or idle: falſe, if you exclude, and idle if you include the King's Perſon in the word *Parliament*: The caſe truly put, and as it is meant, is, whether the three Eſtates (or which is all one, the Lords and Commons) aſſembled in Parliament be above the King: and not whether the King with the three Eſtates be above the King: It appears alſo that they are much miſtaken, who reckon the King one of the three Eſtates as Mr. *Pryn*, *pag.* 20. and many others do; for the three Eſtates make the Body, and the King is *Caput, Principium, & finis Parliamentor'*, as confeſſeth Sir *Edw. Coke*.

Secondly, Sir *Edw. Coke* delivers, That *certain it is, both Houſes at firſt ſate together, and that it appears in* Edward *the Third's time, the Lords and Commons ſate together, and the Commons had no continual Speaker.* If he mean, the Lords and Commons did ſit, and Vote together in one Body; few there be that will believe it, becauſe the Commons never were wont to loſe, or forego any of their Liberties, or Privileges; and for them to ſtand now with their Hats in their hands (which is no Magiſtratical Poſture) there, where they were wont to ſit and Vote, is an alteration not imaginable to be indured by the Commons. It may be, in former times, when the *Commons* had no conſtant Speaker, they were oft, and perhaps for the moſt part, in the ſame Chamber, and in the preſence of the Lords, to hear the Debates and Conſul-

ſultations of the *Great Councel*, but not to ſit, and Vote with them: for when the Commons were to Adviſe among themſelves, the Chapter-houſe of the *Abby* of *Weſtminſter* was oft-times their place to meet in, before they had a ſettled Houſe, and their meetings not being very frequent, may be the reaſon, I conceive, why the name of the Houſe of Commons is not of ſuch great Antiquity, or taken notice of; but the Houſe of Lords was only called the Parliament-Houſe: and the Treatiſe called, *Modus tenendi Parliamentum*, ſpeaks of the *Parliament* as but of one Houſe only. The Houſe, where now the *Commons* ſit in *Weſtminſter*, is but of late Uſe, or Inſtitution: for in *Edward* the Sixth's dayes it was a Chappel of the Colledge of Saint *Stephen*, and had a Dean, Secular Canons and Choriſts, who were the Kings Quire at his Palace at *Weſtminſter*, and at the diſſolution were tranſlated to the Kings Chappel at *White-hall*. *Stow.*

Alſo I read, that *Weſtminſter-hall* being out of Repair, *Ric.* 2. cauſed a large Houſe to be builded betwixt the Clock-tower, and the Gate of the great old Hall in the midſt of the Palace Court: the Houſe was long and large, made of Timber, covered with Tiles, open on both ſides, that all might ſee and hear what was both ſaid and done: four thouſand Archers of *Cheſhire*, which were the Kings own Guard, attended on that Houſe, and had *bouche a Court*, and 6 *d.* by the day.

Thirdly, he ſaith, *The Commons are to chuſe their Speaker, but ſeeing after their Choice the King may refuſe him, the Uſe is (as in the* conge d'eſlire *of a Biſhop) that the King doth name a Diſcreet, Learned man whom the Commons Elect: when the Commons have cho-*

*choſen, the King may allow of his Excuſe, and Diſallow him, as Sir* John Popham *was,* ( ſaith his Margin. )

Fourthly, he informs us, That *the firſt day of the Parliament four Juſtices aſſiſtants, and two Civilians, ( Maſters of the Chancery ) are appointed Receivers of Petitions, which are to be delivered within ſix dayes following : and ſix of the Nobility, and two Biſhops, calling to them the Kings Learned Councel, when need ſhould be, to be Tryers of the ſaid Petitions, whether they were reaſonable, good, and neceſſary to be offered and propounded to the Lords.* He doth not ſay, that any of the Commons were either Receivers, or Tryers of Petitions: nor that the Petitions were to be propounded to Them, but to the Lords.

Fifthly, he teacheth us, that *a Knight, Citizen, or Burgeſs, cannot make a Proxy, becauſe he is Elected, and Truſted by multitudes of People*: here a Queſtion may be, whether *a Committee,* if it be *Truſted to act any thing,* be not a *Proxy?* ſince he ſaith, *the High Power of Parliament to be committed to a few, is holden to be againſt the Dignity of Parliaments; and that no ſuch Commiſſion ought to be granted.*

Sixthly, he ſaith, *The King cannot take notice of any thing ſaid, or done in the Houſe of Commons, but by the Report of the Houſe.* Surely, if the Commons ſate with the Lords, and the *King* were preſent, He might take notice of what was done in His Preſence. And I read in *Vowel,* that *the old Uſage was, that all the Degrees of Parliament ſate together, and every man that had there to ſpeak, did it openly, before the King and his whole Parliament.*

In the 35 *Eliz.* there was a Report, that the Commons were againſt the Subſidies, which was told the

the Queen: whereupon, Sir *Henry Knivet* ſaid, *it ſhould be a thing anſwerable at the* Bar *for any man to report any thing of Speeches, or Matters done in the Houſe.* *Sir* John Wolley *liked the Motion of Secrecy; except only the Queen, from whom,* he ſaid, *there is no reaſon to keep any thing:* And *Sir* Robert Cecil *did allow, that the Councel of the* Houſe *ſhould be ſecretly kept, and nothing reported* in malam partem. *But if the meaning be, that they might not report any thing done here to the Queen, he was altogether againſt it.*

Seventhly, he voucheth *an Enditement or Information in the* Kings Bench *againſt 39 of the Commons, for departing without Licenſe from Parliament, contrary to the* Kings *Inhibition: whereof ſix ſubmitted to their Fines, and* Edmund Ployden *pleaded, he remained continually from the beginning to the end of the Parliament:* Note, he did not plead to the Juriſdiction of the Court of Kings Bench, but pleaded his conſtant Attendance in Parliament, which was an Acknowledgment, and ſubmitting to the Juriſdiction of that Court: and had been an unpardonable betraying of the Privileges of Parliament by ſo learned a Lawyer, if his Caſe ought only to be tryed in Parliament.

Eighthly, he reſolves, that *the Houſe of Lords in their Houſe have Power of Judicature, and the Commons in their Houſe: and both Houſes together.* He brings Records to prove the Power of Judicature of both Houſes together, but not of either of them by it ſelf. He cites the 33 *Edw.* 1. for the Judicature of both Houſes together: where *Nicholas de Segrave* was adjudged *per Prælatos, Comites, & Barones, & alios de Concilio,* by the Prelates, Earls and Barons, and others of the Councel. Here is no mention of the

the Judgment of the Commons. *Others of the Councel*, may mean, the Kings Privy Councel, or his Councel Learned in the Laws, which are called by their Writs to give Counſel; but ſo are not the Commons. The Judgment it ſelf ſaith, " *Nicholas* " *de Segrave* confeſſed his fault in Parliament, and " ſubmitted himſelf to the Kings Will: thereupon " the King, willing to have the Advice of the Earls " Barons, Great men, and others of his Councel, en- " joyned them by the Homage, Fealty, and Allegi- " ance which they owed, that they ſhould faithfully " counſel Him what Puniſhment ſhould be inflicted " for ſuch a Fact: who all, adviſing diligently, *ſay*, " That ſuch a Fact deſerves loſs of Life and Members. Thus the Lords (we ſee) did but Adviſe the King what Judgment to give againſt him that deſerted the *Kings* Camp to fight a Duel in *France*.

Ninthly, he ſaith, *Of later times, ſee divers notable Judgments at the Proſecution of the Commons by the Lords*: where the Commons were Proſecutors, they were no Judges, but (as he termes them) *general Inquiſitors*, or the *Grand Inqueſt of the Kingdom*. The Judgments he cites are but in King *James* his dayes, and no elder.

Tenthly, alſo he tells us, of the *Judicature in the Houſe of Commons alone*; his moſt ancient precedent is but in Queen *Elizabeths* Reign, of one *Tho. Long, who gave the Maior of* Weſtbury 10 l. *to be elected Burgeſs*.

Eleventhly, he hath a Section, entitled, *The Houſe of Commons (to many Purpoſes) a diſtinct Court*: and ſaith, *Nota, the Houſe of Commons to many Purpoſes, a diſtinct Court:* of thoſe many Purpoſes he tells but one, that is, *it uſes to adjourn it ſelf*. Commiſſioners that be

be but to examine Witneſſes, may Adjourn themſelves, yet are no Court.

Twelfthly, he handles the *Privileges of Parliament*, where the great Wonder is, that this great Maſter of the Law, who hath been oft a Parliament-man, could find no other, nor more Privileges of Parliament but one, and that is, *freedom from Arreſts*: which, he ſaith, holds, unleſs in three caſes, *Treaſon*, *Felony*, and *the Peace*. And for this freedom from Arreſts, he cites Antient Precedents for all thoſe in the Houſe of Lords, but he brings not one Precedent at all for the Commons Freedom from Arreſts.

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It is behooful for a Free-holder to conſider what Power is in the Houſe of Peers; for although the Free-holder have no Voice in the Election of the Lords, yet if the Power of that Houſe extend to make Ordinances that bind the Free-holders, it is neceſſary for him to enquire *what* and *whence* that Power is, and how far it reacheth: The chief Writ of Summons to the *Peers* was in theſe words,

CAROLUS Dei Gratia, *&c. Reverendiſſimo in Chriſto patri G. eadem gratia Archiepiſcopo Cantuarienſi, totius Angliæ Primati & Metropolitano, ſalutem. Quia de adviſamento & aſſenſu Concilii noſtri, pro quibuſdam arduis & urgentibus negotiis, Nos & ſtatum & defenſionem regni noſtri Angliæ, & eccleſiæ Anglicanæ concernentibus, quoddam Parliamentum noſtrum apud W. &c. teneri ordinavimus, & ibidem vobiſcum, & cum cæteris Prælatis, Magnatibus & Proceribus dicti regni noſtri Angliæ colloquium habere, & tractatum: Vobis in fide, & dilectione quibus nobis tenemini firmiter injungendo*

*gendo mandamus, quod conſideratis dictorum negotiorum arduitate, & periculis imminentibus, ceſſante quacunque excuſatione dictis die & loco perſonaliter interſitis, Nobiſcum & cum cæteris Prælatis, Magnatibus, & Proceribus prædictis; ſuper dictis negotiis tractaturi, veſtrumque concilium impenſuri, & hoc ſicut Nos & Honorem noſtrum ac ſalvationem regni prædicti, ac eccleſiæ ſanctæ, expeditionemq; dictorum negotiorum diligitis, nullatenus omittatis; Præmonentes Decanum & capitulum eccleſiæ veſtræ Cantuarienſis, ac Archidiacanos, totumque Clerum veſtræ Dioceſis, quod idem Decanus & Archidiaconi in propriis perſonis ſuis, ac dictum Capitulum per unum, idemque Clerus per duos Procuratores idoneos, plenam & ſufficientem poteſtatem ab ipſis Capitulo & Clero habentes, prædictis die & loco perſonaliter interſint, ad conſentiendum hiis quæ tunc ibidem de Commune Concilio ipſius Regni Noſtri, divina favente Clementia, contigerint ordinari. Teſte Meipſo apud Weſt. &c.*

CHARLES *by the Grace of God, &c.* To the moſt Reverend Father in Chriſt *W.* by the ſame Grace Arch-biſhop of *Canterbury*, Primate and Metropolitan of all *England*, Health. Whereas by the Advice and Aſſent of our Councel, for certain difficult and urgent Buſineſſes concerning Us, the State, and Defence of Our Kingdom of *England*, and of the Engliſh Church: We have Ordained a certain Parliament of Ours to be holden at *W. &c.* and there to have Conference, and to treat with you the Prelats, Great men, and Peers of Our ſaid Kingdom. We ſtraitly Charge and Command, by the Faith and Love by which you are bound to Us, that conſidering the Difficulties of the Buſineſſes aforeſaid, and the imminent Dangers, and ſetting aſide all Excuſes,

cuſes, you be perſonally preſent at the Day and Place aforeſaid, to treat and give your Counſel concerning the ſaid Buſineſſes: And this, as you love Us and Our Honour, and the Safeguard of the foreſaid Kingdom and Church, and the Expedition of the ſaid Buſineſſes, you muſt no way omit. Forewarning the Dean and Chapter of your Church of *Canterbury*, and the Arch-deacons, and all the Clergy of your Dioceſe, that the ſame Dean, and the Arch-deacon in their proper Perſons, and the ſaid Chapter by one, and the ſaid Clergy by two fit Proctors, having full and ſufficient Power from them the Chapter and Clergy, be perſonally preſent at the foreſaid Day and Place, to Conſent to thoſe things, which then and there ſhall happen by the favour of God, to be Ordained by the Common Councel of our Kingdom. Witneſs Our Self at *Weſtm.*

. The ſame Form of Writ *mutatis mutandis*, concluding with, *you muſt no way omit.* Witneſs, &c. is to the Temporal Barons: But whereas the Spiritual Barons are required by the Faith and Love, the Temporal are required by their Allegiance or Homage.

The Difference between the two Writs is, *that* the *Lords* are to *Treat* and to *Give Counſel*; the *Commons* are to *Perform* and *Conſent* to what is ordained.

By this Writ the Lords have a *deliberative* or a *conſultive Power to Treat, and give Counſel in difficult Buſineſſes*: and ſo likewiſe have the Judges, Barons of the Exchequer, the Kings Councel, and the Maſters of the Chancery, by their Writs. But over and beſides this Power, the Lords do exerciſe a *deciſive*

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or *Judicial* Power, which is not mentioned or found in their Writ.

For the better Underſtanding of theſe two different Powers, we muſt carefully note the diſtinction between a *Judge* and a *Counſellor* in a Monarchy: the ordinary Duty, or Office of a *Judge* is to give Judgment, and to command in the Place of the King; but the ordinary Duty of a *Counſellor* is to adviſe the King what he himſelf ſhall do, or cauſe to be done: The *Judge* repreſents the *Kings Perſon in his abſence*, the *Counſellor* in the *Kings Preſence* gives his Advice: *Judges* by their Commiſſion or Inſtitution are limited their Charge and Power, and in ſuch things they may judge, and cauſe their Judgments to be put in Execution: But *Counſellors* have no Power to command their Conſultations to be executed, for that were to take away the Sovereignty from their Prince, who by his Wiſdom is to weigh the Advice of his Councel, and at liberty to reſolve according to the Judgment of the wiſer part of his Councel, and not always of the greater: In a word, regularly a *Counſellor* hath no Power but in the Kings Preſence, and a *Judge* no Power but out of his Preſence; Theſe two Powers, thus diſtinguiſhed, have yet ſuch Correſpondency, and there is ſo neer Affinity between the Acts of judging, and counſelling; that although the ordinary Power of the Judge is to give Judgment: yet by their Oath they are bound in Cauſes extraordinary, when the King pleaſeth to call them, to be his Counſellors; and on the other ſide, although the proper work of a Counſellor be only to make Report of his Advice to his Sovereign, yet many times for the Eaſe only, and by the Permiſſion of the King, Counſellors are allowed

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to judge, and command in Points wherein ordinarily they know the mind of the Prince; and what they do is the act of the Royal Power it ſelf: for the Councel is always preſuppoſed to be united to the Perſon of the King, and therefore the Decrees of the Councel are ſtyled, *By the King in his Privy Councel.*

To apply this Diſtinction to the Houſe of *Peers*: we find originally they are called as Counſellors to the King, and ſo have only a *deliberative* Power ſpecified in their Writ, and therefore the Lords do only then properly perform the Duty for which they are called, when they are in the Kings Preſence, that *He may have Conference and treat with them*: the very Words of the Writ are, *nobiſcum ac cum Prælatis, Magnatibus & Proceribus prædictis ſuper dictis negotiis tractaturi veſtrumque concilium impenſuri*, with Us and with the Prelates, Great men and Peers to treat and give your councel: the word *Nobiſcum* implieth plainly the Kings Preſence. It is a thing in reaſon moſt abſurd, to make the King aſſent to the Judgments in Parliament, and allow Him no part in the Conſultation; this were to make the King a Subject. Councel loſeth the name of *Councel*, and becomes a Command if it put a Neceſſity upon the King to follow it: ſuch Imperious Councels, make thoſe that are but Counſellors in name to be Kings in Fact: and Kings themſelves to be but Subjects. We read in Sir *Robert Cotton*, that *towards the end of the Saxons, and the firſt times of the Norman Kings, Parliaments ſtood in Cuſtom-grace fixed to Eaſter, Whitſontide, and Chriſtmas; and that at the Kings Court, or Palace,*

*Parliaments ſate in the Preſence, or Privy Chamber*: from whence he infers, *an Improbability to believe the King excluded His own Preſence; and unmannerly for Gueſts to bar Him their Company who gave them their Entertainment.* And although now a-days the Parliament ſit not in the Court where the Kings houſhold remains, yet ſtill even to this day, to ſhew that Parliaments are the Kings Gueſts, the Lord Steward of the Kings Houſhold keeps a ſtanding Table to entertain the *Peers* during the ſitting of Parliament; and he alone, or ſome from, or under him, as the Treaſurer, or Comptroller of the Kings Houſhold takes the Oaths of the Members of the Houſe of Commons the firſt day of the Parliament.

Sir *Richard Scroop* Steward of the Houſhold of our Sovereign Lord the King, by the Commandment of the Lords ſitting in full Parliament in the Great Chamber, put *J. Lord Gomeniz* and *William Weſton* to anſwer ſeverally to Accuſations brought againſt them. *Selden.*

The Neceſſity of the King's Preſence in Parliament, appears by the Deſire of Parliaments themſelves in former times; and the Practice of it Sir *Robert Cotton* proves by ſeveral Precedents: whence he concludes, *that in the Conſultations of State, and Deciſions of private Plaints, it is clear from all times, the King was not only preſent to adviſe, but to determine alſo.* Whenſoever the King is preſent, all Power of judging, which is derived from *His*, ceaſeth: The Votes of the Lords may ſerve for matter of Advice, the final Judgment is only the Kings. Indeed, of late years, Queen *Mary*, and Queen *Elizabeth*, by reaſon of their Sex, being not ſo fit for publick Aſſemblies, have brought it out of Uſe, by which means it is come

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to paſs, that many things which were in former times acted by Kings themſelves, have of late been left to the Judgment of the *Peers*; who, in Quality of Judges extraordinary, are permitted for the Eaſe of the King, and in His abſence, to determine ſuch matters as are properly brought before the King Himſelf ſitting in Perſon, attended with *His great Councel of Prelates and Peers*. And the Ordinances that are made there, receive their Eſtabliſhment either from the Kings Preſence in Parliament, where his Chair of State is conſtantly placed; or at leaſt from the Confirmation of Him, who in all Courts, and in all Cauſes is Supream Judge. All Judgement is by, or under Him; it cannot be without, much leſs againſt his Approbation. *The King only and none but He, if He were able, ſhould judge all Cauſes*; ſaith *Bracton*, that ancient Chief Juſtice in *Hen.* 3. time.

An ancient Precedent I meet with cited by Maſter *Selden*, of a judicial Proceeding in a Criminal Cauſe of the *Barons* before the Conqueſt, wherein I obſerve the *Kings Will* was, that the Lords ſhould be Judges, in the Cauſe wherein *Himſelf* was a Party; and *He* ratified their Proceeding: The caſe was thus, Earl *Godwin* having had a Trial before the Lords under King *Hardicanute*, touching the Death of *Alfred* (Son to King *Ethelbert*, and Brother to him who was afterward *Edward the Confeſſor*) had fled out of *England*; and upon his Return, with Hope of *Edward the Confeſſor*'s Favour, he ſolicited the Lords to intercede for him with the King; who (conſulting together) brought *Godwin* with them before the King to obtain his Grace and Favour: But the King preſently, as ſoon as he beheld him, ſaid, *Thou*

*Traytor* Godwin, *I do appeal thee of the Death of my Brother* Alfred, *whom thou haſt moſt trayterouſly ſlain*; Then *Godwin* excuſing it, anſwered, *My Lord the King, may it pleaſe your Grace, I neither betrayed nor killed your* Brother, *whereof I put my ſelf upon the Judgment of your Court:* Then the King ſaid, *You noble Lords, Earls, and* Barons *of the Land, who are my Liege men now gathered here together, and have heard My Appeal, and* Godwins *Anſwer,* I Will *that in this Appeal between Us, ye decree right Judgment, and do true Juſtice.* The *Earls* and *Barons* treating of this among themſelves, were of differing Judgments; ſome ſaid that *Godwin* was never bound to the King either by Homage, Service, or Fealty, and therefore could not be his *Traytor*, and that he had not ſlain *Alfred* with his own hands: others ſaid, that neither *Earl* nor *Baron*, nor any other Subject of the King could wage his War by Law againſt the King in his Appeal; but moſt wholly put himſelf into *the Kings Mercy*, and offer competent Amends. Then *Leofric Conſul of Cheſter*, a good man before God and the World, ſaid, Earl *Godwin* next to the King, is a man of the beſt Parentage of all *England*, and he cannot deny but that by his Counſel *Alfred* the Kings Brother was ſlain, therefore for my part I conſider, that He *and his Son, and all we twelve Earls who are his Friends and Kinſmen, do go humbly before the King, laden with ſo much Gold and Silver as each of us can carry in our Arms, offering him That for his Offence, and humbly praying for Pardon; And he will pardon the Earl, and taking his Homage and Fealty, will reſtore him all his Lands.* All they in this form lading themſelves with Treaſure, and coming to the King, did

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ſhew the Manner and Order of their Conſideration, to which, *The King not willing to contradict, did ratifie all that they had judged.*

23 *Hen.* 2. In Lent there was an Aſſembly of all the Spiritual and Temporal Barons at *Weſtminſter*, for the determination of that great Contention between *Alfonſo King of Caſtile*, and *Sancho King of Navarre*, touching divers Caſtles, and Territories in *Spain*, which was by compromiſe ſubmitted to the Judgment of the King of *England*. And *the King, conſulting with his Biſhops, Earls, and Barons, determined it* (as he ſaith) *Himſelf* in the firſt Perſon, in the Exemplification of the Judgement. *Selden.*

2 Of King *John* alſo, that great Controverſie touching the Barony that *William of Moubray* claimed againſt *William of Stutvil*, which had depended from the time of King *Hen.* 2. was ended by the *Councel of the Kingdom*, and *Will of the King*: *Concilio regni, & voluntate Regis.*

The Lords in Parliament adjudge *William de Weſton* to Death for ſurrendring *Barwick* Caſtle, but for that *Our Lord the King* was not informed of the manner of the Judgment, the Conſtable of the Tower, *Allen Buxall, was commanded ſafely to keep the ſaid* William *untill he hath other Commandment from our Lord the King.* 4 Ric. 2. *Selden.*

Alſo the Lords adjudged *John Lord of Gomentz* for ſurrendring the Towns, and Caſtles of *Ardee*: and for that he was a Gentleman, and Bannaret, and had ſerved the late King, *he ſhould be beheaded, and for that our Lord the King was not informed of the manner of the Judgment, the Execution thereof ſhall be reſpited untill our Lord the* *Selden.*

*King ſhall be informed.* It is commanded to the *Conſtable of the Tower, ſafely to keep the ſaid* John, *untill he hath other commandement from our Lord the King.*

In the caſe of *Hen. Spencer* Biſhop of *Norwich*, 7 *Ric.* 2. who was accuſed for complying with the *French*, and other Failings; the Biſhop complained, what was done againſt him, did not paſs by the Aſſent and Knowledge of the *Peers*; whereupon it was ſaid in Parliament, that *The cogniſance and Puniſhment of his Offence did, of common Right, and antient Cuſtom of the Realm of* England, *ſolely and wholly belong to Our Lord the King, and no other*: *Le cogniſance & puniſſement de commune droit & auncienne cuſtome de Royalme de* Engleterre, *ſeul & per tout apperteine au Roy noſtre Seignieur, & a nul autre.*

In the caſe of the Lord *de la Ware*, the Judgment of the Lords was, *that he ſhould have place next after the Lord* Willoughby *of* Erisbe, by conſent of all, except the Lord *Windſor*: and the *Lord Keeper was required to acquaint Her Majeſty with the Determination of the Peers, and to know her Pleaſure concerning the ſame.*

The Inference from theſe Precedents, is, that the *Deciſive* or *Judicial* Power exerciſed in the *Chamber of Peers*, is merely derivative, and ſubſervient to the Supreme Power, which reſides in the King, and is grounded ſolely upon his *grace* and favour: for howſoever the Houſe of Commons do alledge their Power to be founded on the Principles of Nature, in that they are the Repreſentative Body of the Kingdom (as they ſay) and ſo being the whole, may take care, and have power by Nature to preſerve themſelves: yet the Houſe of *Peers* do not, nor cannot

not make any ſuch the leaſt Pretence, ſince there is no reaſon in Nature, why amongſt a company of men who are all equal, ſome few ſhould be picked out to be exalted above their Fellows, and have power to Govern thoſe who by Nature are their companions. The difference between a *Peer* and a *Commoner*, is not by *Nature*, but by the *grace of the Prince*: who creates Honours, and makes thoſe Honours to be hereditary (whereas he might have given them for life onely, or during pleaſure, or good behaviour) and alſo annexeth to thoſe Honours the Power of having Votes in Parliament, as hereditary Counſellours, furniſhed with ampler Privileges than the Commons: All theſe Graces conferred upon the Peers, are ſo far from being derived from the Law of Nature, that they are contradictory and deſtructive of that natural equality and freedom of mankind, which many conceive to be the foundation of the Privileges and Liberties of the Houſe of Commons: there is ſo ſtrong an oppoſition between the liberties of *Grace* and *Nature*, that it had never been poſſible for the two Houſes of Parliament to have ſtood together without mortal Enmity, and eternal jarring, had they been raiſed upon ſuch oppoſite foundations: But the truth is, the Liberties and Privileges of both Houſes have but one, and the ſelf-ſame foundation, which is nothing elſe but the meer and ſole Grace of Kings.

Thus much may ſerve to ſhew the Nature and Original of the *deliberative* and *deciſive* Power of the Peers of the Kingdom.

The matter about which the *deliberative* power is converſant, is generally the Conſulting and Advi-

ſing upon any urgent Buſineſs which concerns the King, or Defence of the Kingdom: and more eſpecially ſometimes in preparing new Laws; and this Power is grounded upon the Writ.

The *deciſive* Power is exerciſed in giving Judgment in ſome difficult Caſes; but for this Power of the *Peers*, I find no Warrant in their Writ.

Whereas the Parliament is ſtyled the *Supreme Court*, it muſt be underſtood properly of the King ſitting in the Houſe of Peers in Perſon; and but improperly of the Lords without him: Every Supreme Court muſt have the Supreme Power, and the Supreme Power is alwayes Arbitrary; for that is Arbitrary which hath no Superiour on Earth to controll it. The laſt Appeal in all Government, muſt ſtill be to an Arbitrary Power, or elſe Appeals will be *in Infinitum*, never at an end. The *Legiſlative* Power is an *Arbitrary* Power, for they are *termini convertibiles*.

The main Queſtion in theſe our dayes is, *Where this Power Legiſlative remains?* or is placed; upon conference of the Writs of Summons for both Houſes, with the Bodies and Titles of our Ancient Acts of Parliament, we ſhall find the Power of making Laws reſts ſolely in the King. Some affirm, that a part of the *Legiſlative* Power is in either of the Houſes; but beſides invincible reaſon from the Nature of Monarchy it ſelf, which muſt have the Supreme Power Alone; the conſtant Antient Declaration of this Kingdom is againſt it. For howſoever of later years in the Titles and Bodies of our Acts of Parliament it be not ſo particularly expreſſed who is the Author and Maker of our Laws, yet in almoſt all our elder Statutes it is preciſely expreſſed, that they

are

are made by the *King Himſelf*: The general words uſed of later times, that *Laws are made by Authority of Parliament*, are particularly explained in former Statutes, to mean, *That the King Ordains, the Lords Adviſe, the Commons Conſent*, as by comparing the Writs with the Statutes that expound the Writs, will evidently appear.

*Magna Charta* begins thus, *Henry by the grace of God, Know ye, that* WE of Our Meer and Free Will have given theſe Liberties.

In the ſelf-ſame ſtyle runs *Charta de Foreſta*, and tells us the Author of it.

The Statute *de Scaccario* 41 *H.* 3. begins in theſe words, *The* King Commandeth, *that all Bailiffs, Sheriffs, and other Officers, &c.* And concerning the Juſtices of *Cheſter*, the King Willeth *&c. and again*, He Commandeth *the Treaſurer and Barons of the Exchequer upon their Allegiance.*

The Stat. of *Marlborough*, 52 Hen. 3. goeth thus: The King hath Made *theſe Acts, Ordinances, and Statutes, which* He Willeth *to be Obſerved of all his Subjects, high and low.*

3 *Edw.* 1. The Title of this Statute is, *Theſe are the* ACTS of King *EDWARD*; and after it follows, *The* KING hath Ordained theſe ACTS; and in the firſt Chapter, *The* King Forbiddeth and Commandeth, That *none do hurt, damage, or grievance to any Religious Man, or Perſon of the Church*: and in the thirteenth Chapter, *The* King prohibiteth that *none do Raviſh or take away by force, any Maid within age.*

6 *Edw.* 1. It is ſaid, *Our Sovereign Lord the King hath eſtabliſhed theſe Acts, commanding they be obſerved within this Realm*: and in the fourteenth Chap.

Chap. the words are, *The King of his ſpecial Grace granteth, that the Citizens of* London *ſhall recover in an Aſſiſe, Damage with the Land.*

The *Stat.* of *Weſt.* 2. ſaith, Our Lord the King hath ordained, *that the Will of the Giver be obſerved*: and in the 3. Chap. Our Lord the King hath ordained, that *a woman after the Death of her Husband ſhall recover by a Writ of Entry.*

The *Stat.* of *Quo Warranto* ſaith, Our Lord the King *at His Parliament, of his ſpecial Grace, and for Affection which he beareth to his Prelates, Earls, and Barons, and others, hath granted, that they that have Liberties by Preſcription ſhall enjoy them.*

In the *Stat. de finibus Levatis*, the Kings Words are, *We intending to provide Remedy in our Parliament have ordained, &c.*

28. *Edw.* 1. *c.* 5. The King Wills, *that the Chancellor, and the Juſtices of the Bench ſhall follow Him, ſo that he may have at all times ſome neer unto him that be learned in the Laws:* and in Chap. 24. the words are, Our Lord the King, *after full Conference and Debate had with his Earls, Barons, Nobles, and other Great men, by their whole Conſent*, hath ordained *&c.*

The *Stat. de Tallagio* (if any ſuch Statute there be) ſpeaks in the *Kings* Perſon, *No Officer* of *Ours: No Tallage ſhall be taken by* Us; We Will and Grant.

1. *Edw.* 2. begins thus, Our Lord the King Willeth and Commandeth.

The *Stat.* of 9. the ſame *King, ſaith*, Our Lord the King, *by the Aſſent of the Prelates, Earls, and other great States*, hath Ordained.

10. *Edw.*

10. *Edw.* 2. *It is provided by our Lord the King and his Juſtices.*

The *Stat.* of *Carlile* ſaith, *We have ſent our Command in writing firmly to be obſerved.*

1. *Edw.* 3. begins thus, *King* Edw. 3. *at his Parliament at the requeſt of the Commonalty by their Petition before him, and his Councel in Parliament, hath granted, &c.* and in the 5th Chap. The King willeth, *that no man be charged to arm himſelf otherwiſe than he was wont.*

5. *Edw.* 3. *Our Lord the King, at the Requeſt of his People, hath eſtabliſhed theſe things, which* He Wills to be kept.

9. Of the ſame *King* there is this Title, *Our Lord the King by the Aſſent &c. and by the Advice of his Councel being there, hath ordained, &c.*

In his 10 year, it is ſaid, *Becauſe* Our Lord King Edw. 3. *hath received by the Complaint of the Prelates, Earls, Barons; alſo at the ſhewing of the Knights of the Shires, and his Commons by their Petition put in his Parliament, &c.* Hath ordained, *by the Aſſent &c. at the Requeſt of the ſaid Knights and Commons, &c.*

The ſame year in another Parliament you may find, *theſe be the Articles accorded by Our Lord the King, with the Aſſent, &c. at the Requeſt of the Knights of the* Shires, *and the Commons by their Petition put in the ſaid* Parliament.

In the year-Book 22 *Edw.* 3. 3. *pl.* 25. It is ſaid, The King makes the Laws by *the Aſſent of the* Peers *and Commons; and not the* Peers *and Commons.*

The *Stat. of* 1. *Ric.* 2. hath this Beginning, Richard *the* 2. *by the Aſſent of the* Prelates, *Dukes, Earls and Barons, and at the Inſtance and ſpecial Requeſt of the Commons,* Ordained.

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There being a Statute made 5 *Ric.* 2. c. 5. againſt *Lollards*, in the next year the Commons Petition Him, *Supplient les Commons que come un eſtatute fuit fait, &c. The Commons beſeech, that whereas a Statute was made in the laſt Parliament, &c. which was never Aſſented to, nor Granted by the Commons, but that which was done therein was done without their Aſſent.* In this Petition the Commons acknowledge it a Statute, and ſo call it, though they aſſented not to it.

17 *Ric.* 2. *nu.* 44. *The Commons deſire, ſome purſuing to make a Law which they conceive hurtful to the Commonwealth; That His Majeſty will not paſs it.*

As for the Parliaments in *Hen.* 4. *Hen.* 5. *Hen.* 6. *Edw.* 4. and *Ric.* 3. Reigns, the moſt of them do agree in this one Title, Our Lord the King *by the Advice and Aſſent of His Lords, and at the ſpecial Inſtance and Requeſt of the Commons*, Hath ordained. The Precedents in this Point are ſo numerous that it were endleſs to cite them.

The *Statutes* in *Hen.* 7. days do for the moſt part agree, both in the Titles and Bodies of the Acts, in theſe words: Our Lord the King *by the Aſſent of the Lords Spiritual and Temporal, and the Commons in Parliament aſſembled, and by the Authority of the ſame*, hath ordained.

Unto this Kings time we find the *Commons very often petitioning, but not petitioned unto.* The firſt Petition made to the Commons that I meet with among the Statutes, is but in the middle of this King *Hen* 7. Reign, which was ſo well approved, that the Petition it ſelf is turned into a Statute: It begins thus, *To the* Right Worſhipful Commons *in this preſent Parliament aſſembled:*

*Sheweth*

*Sheweth to your diſcreet Wiſdoms, the Wardens of the Fellowſhip of the Craft of Upholſters within London*, &c. This Petition, though it be directed to the Commons in the Title; yet the Prayer of the Petition is turned to the King, and not to the Commons; for it concludes, *therefore it may pleaſe the Kings Highneſs by the Advice of the Lords Spiritual and Temporal, and his Commons in Parliament, &c.*

Next for the *Statutes* of *Hen.* 8. they do moſt part agree, both in their Titles, and the Bodies of the Acts, with thoſe of his Father King *Hen.* 7.

Laſtly, In the Statutes of *Edw.* 6. Qu. *Mary*, Q. *Elizabeth*, K. *James*, and of our Sovereign Lord the *King* that now is, there is no Mention made in their Titles of any Aſſent of Lords and Commons, or of any Ordaining by the King, but only in general terms it is ſaid, *Acts made in Parliament*: or thus, *At the Parliament were Enacted*: yet in the Bodies of many of theſe Acts of theſe laſt Princes, there is ſometimes Mention made of *Conſent of Lords and Commons*, in theſe or the like words: *It is Enacted by the King, with the Aſſent of the Lords and Commons*; Except only in the Statutes of our Lord King *Charles*, wherein there is no Mention, that I can find, of any Conſent of the Lords and Commons; or Ordaining by the King: But the words are, *Be it Enacted by Authority of Parliament*: or elſe, *Be it Enacted by the King, the Lords Spiritual and Temporal, and Commons*; as if they were all Fellow-Commiſſioners.

Thus it appears, that even till the time of *K. Ed.* 6. who lived but in our Fathers dayes, it was punctually expreſſed in every King's Laws, that the Statutes & Ordinances were made by the King. And withal we

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may ſee by what degrees the Styles, and Titles of Acts of Parliament have been varied, and to whoſe Diſadvantage. The higher we look, the more abſolute we find the Power of Kings in Ordaining Laws: nor do we meet with at firſt ſo much as the Aſſent or Advice of the Lords mentioned. Nay, if we caſt our eye upon many Statutes of thoſe that be of moſt Antiquity, they will appear as if they were no Laws at all; but as if they had been made only to teach us, that the Puniſhments of many Offences were left to the meere pleaſure of Kings. The *punitive* part of the Law, which gives all the Vigour and Binding Power to the Law, we find committed by the Statutes to the Kings meer Will and Pleaſure, as if there were no Law at all. I will offer a few Precedents to the Point.

3 *Edw.* 1. *c.* 9. ſaith, *That Sheriffs, Coroners, and Bailiffs, for concealing of Felonies, ſhall make grievous* Fines at the Kings pleaſure.

Chap. 13. Ordains, *That ſuch as be found culpable of Raviſhing of Women, ſhall* Fine at the Kings pleaſure.

Chap. 15. ſaith, *The penalty for detaining a Priſoner that is mainpernable, is* a Fine at the Kings pleaſure, *or a grievous Amercement to the King*; and, *he that ſhall take Reward for deliverance of ſuch, ſhall be at the* Great Mercy of the King.

Chap. 20. *Offenders in Parks or Ponds ſhall make* Fines at the Kings pleaſure.

Chap. 25. *Committers of Champerty, and Extortioners, are to be* puniſhed at the Kings pleaſure.

Chap. 31. *Purveyors, not paying for what they take, ſhall be* Grievouſly puniſhed at the Kings pleaſure.

Chap.

Chap. 32. The King ſhall puniſh Grievouſly *the Sheriff, and him that doth maintain Quarrels.*

Chap. 37. *The King ſhall grant Attaint in Plea of Land where it ſhall ſeem to him neceſſary.*

7 Edw. 1. ſaith, *Whereas of late, before certain Perſons deputed to Treat upon Debates between Us and certain Great Men, it was accorded, that in our next Parliament proviſion ſhall be made by Us, and the common Aſſent of the Prelates, Earls, and Barons, that in all Parliaments for ever, every man ſhall come without Force and Armour. And now in our next Parliament the Prelates, Earls, Barons, and Commonalty have ſaid, That to* US it belongeth, through Our Royal Signory, ſtraitly to defend Force of Armour at all times, when it ſhall pleaſe Us, and to puniſh them which ſhall do otherwiſe, and hereunto they are bound to Aid Us their Sovereign Lord at all Seaſons when Need ſhall be.

13 Edw. 1. *Takers away of Nuns from Religious Houſes,* Fined at the Kings Will.

*If by the Default of the Lord that will not avoid the Dike, Underwoods, and Buſhes in High-wayes, murder be done, the Lord ſhall make* Fine at the Kings pleaſure.

28 Edw. 1. *If a Gold-ſmith be attainted for not Aſſaying, Touching, and Working Veſſels of Gold, he ſhall be* puniſhed by Ranſome at the Kings pleaſure.

2 *Hen.* 4. *The Commons deſire they may have Anſwer of their Petitions before the gift of any Subſidy; to which the King anſwers, He would conferr with the Lords, and do what ſhould be beſt according to their Advice; and the laſt day of Parliament He gave this Anſwer, That* that manner of Doing had not been Seen,

nor

nor uſed in no time of his Progenitors or Predeceſſors, *that they ſhould have any Anſwer of their Petitions, or knowledge of it before they have ſhewed, and finiſhed all their other Buſineſs of* Parliament, *be it of any Grant, Buſineſs, or otherwiſe, and therefore the* King would not in any wayes change the Good Cuſtoms and Uſages Made and Uſed of Antient Times.

5 *Hen.* 4. c. 6. *Whereas one* Savage *did Beat and maime one* Richard Chedder *Eſquire, Menial Servant to* Tho. Brook, *Knight of the Shire for* Somerſet-ſhire, the Statute ſaith, Savage *ſhall make* Fine and Ranſom at the Kings Pleaſure.

8 *Hen.* 4. It is ſaid, *POTESTAS PRINCIPIS NON EST INCLUSA LEGIBUS, the Power of the Prince is not included in the Laws.*

13 *Hen.* 4. *nu.* 20. we read of a *Reſtitution in Bloud, and Lands of* William Laſenby, *by the King, by the Aſſent of the Lords Spiritual, and Commons; omitting the Lords Temporal.*

2 *Hen.* 5. in a Law made, there is a Clauſe, That *it is the Kings Regalty to grant or deny ſuch of their Petitions as pleaſeth Himſelf.*

6 *Hen.* 6. c. 6. *An Ordinance was made for to endure* As long as it ſhall pleaſe the King.

11 *Hen.* 7. c. 1. hath this Law, *The King our Sovereign Lord, calling to His remembrance the duty of Allegiance of His Subjects of this His Realm, and that by reaſon of the ſame they are bound to ſerve their Prince and Sovereign Lord for the time being in His Wars, for the Defence of Him, and the Land, againſt every Rebellion, Power, and Might reared againſt Him, and with Him to enter and abide in Service in Battel, if Caſe ſo require; and that for the ſame Service, what fortune*

ever

*ever fall by chance in the ſame Battel, againſt the Mind and Will of the Prince (as in this Land ſome time paſt hath been ſeen) that it is not reaſonable, but againſt all Laws, Reaſon, and good Conſcience, that the ſaid Subjects, going with their Sovereign Lord in Wars, attending upon Him in His Perſon, or being in other places, by his Commandement within the Land, or without, any thing ſhould loſe or forfeit, for doing their true Duty and Service of Allegiance; Be it therefore Enacted, That no Perſon that ſhall attend upon the King, and do Him true Service, ſhall be attainted therefore of Treaſon, or any other Offence by Act of Parliament, or otherwiſe.*

Alſo the 18 Chap. of the ſame Year ſaith, *Where every Subject by the Duty of his Allegiance is bounden to Serve and Aſſiſt his Prince and Sovereign Lord at all Seaſons when need ſhall require, and bound to give attendance upon his Royal Perſon, to defend the ſame when He ſhall fortune to go in Perſon in War for Defence of the Realm, or againſt His Rebels and Enemies, for the Subduing and Repreſſing of them, and their malitious purpoſe.*

*Chriſtopher Wray*, Serjeant at Law, choſen Speaker, 13 *Eliz.* in his Speech to Her Majeſty, ſaid, that for the orderly Government of the Commonwealth, three things were neceſſary:

1. *Religion.*
2. *Authority.*
3. *Law.*

*By the firſt, we are taught not only our Duty to God, but to obey the Queen, and that not only in Temporals, but in Spirituals, in which Her Power is abſolute.*

Mr. *Grivel* in the 35 *Eliz.* ſaid in Parliament, *He wiſhed not the making of many Laws; ſince the more we*

*make, the leſs Liberty we have our ſelves; Her Majeſty not being bound by them.*

For further proof that the Legiſlative Power is proper to the King, we may take notice, that in antient time, as Sir *Edw. Coke* ſaith, *All Acts of Parliament were in form of Petitions*: if the Petitions were from the Commons, and the Anſwer of them the King's, it is eaſie thereby to judge who made the Act of Parliament: Alſo Sir *Jo. Glanvil* affirms, that in former times the courſe of Petitioning the *King* was this, *The Lords and Speaker, either by Words or Writing, preferr'd their Petition to the King; this then was called the Bill of the Commons, which being received by the King, part He received, part He put out, and part he ratified; for as it came from Him, it was drawn into a Law.*

Alſo it appears, that *Proviſions*, *Ordinances*, and *Proclamations*, made heretofore out of Parliament, have been alwayes acknowledged for Laws and Statutes: We have amongſt the printed Statutes, one called the *Statute of Ireland*, dated at *Weſtminſter*, 9 *Feb.* 14 *Hen.* 3. which is nothing but a *Letter of the King to* Gerard *Son of* Maurice Juſticer *of Ireland.*

Chanc. *Egerton.*

*The Explanations of the Statute of* Glouceſter *made by the King and His Juſtices only*, were received alwayes for Statutes, and are ſtill printed with them.

Alſo the Statute made for the correction of the twelfth Chapter of the Statute of *Glouceſter*, was Signed under the Great Seal, and ſent to the Juſtices of the Bench after the manner of a Writ Patent, with a certain Writ cloſed, dated by the Kings hand at *Weſtminſter*, 2 *Maii* 9 *Edw.* 1. requiring that *they ſhould do and execute all and every thing contained*

*tained in it, though the ſame do not accord with the Stat. of* Glouceſter *in all things.*

The *Proviſions* of *Merton* made by the King at an Aſſembly of Prelates, and the greater part of the *Earls* and *Barons*, for the Coronation of the *King*, and his Queen *Elinor*, are in the form of a Proclamation, and begin *Proviſum eſt in Curia domini Regis apud Merton.*

19 *Hen.* 3. a Proviſion was made, *de aſſiſa præſentationis*, which was continued and allowed for a Law untill the *Stat.* of *Weſt.* 2. which provides the contrary in expreſs words.

In the old Statutes it is hard to diſtinguiſh what Laws were made by Kings *in* Parliament, and what *out* of Parliament: when Kings called *Peers* only to Parliament, and of thoſe how many, or whom they pleaſed, (as it appears anciently they did) it was no eaſie matter to put a difference between a Councel-Table, and a Parliament: or between a Proclamation and a Statute: Yet it is moſt evident, that in old times there was a diſtinction between the *Kings ſpecial* or *Privy Councel*, and His *Common Councel* of the *Kingdom*: and His ſpecial Councel did ſit with the Peers in Parliament, and were of great and extraordinary Authority there.

In the Stat. of *Weſtm.* 1. it is ſaid, *Theſe are the Acts of K.* Edw. 1. *made at His firſt Parliament by* His Councel, *and by the Aſſent of Biſhops, Abbots, Priors, Earls, Barons, and all the Commonalty of the Realm.*

The *Stat.* of *Acton Burnell* hath theſe words, *The King for Himſelf, and by His Councel, hath Ordained and Eſtabliſhed.*

*In articulis ſuper Chartas*, when the Great Charter was confirmed at the Requeſt of the Prelates, Earls, and Barons, are found theſe two proviſions:

1. *Nevertheleſs* the King and his Councel *do not intend by reaſon of this Statute to diminiſh the Kings Right.*

2. *Notwithſtanding all theſe things before-mentioned, or any part of them, both the King and his Councel, and all they that were preſent, Will and intend, that the Right and Prerogative of His Crown ſhall be ſaved to Him in all things.*

The *Stat.* of *Eſcheators* hath this Title, *At the Parliament of our Sovereign Lord the King, By His Councel it was agreed, and alſo by the King himſelf commanded.*

1 *Edw.* 3. where *Magna Charta* was confirmed, this Preamble is found, *At the requeſt of the Commonalty, by their Petition made before the* King and His Councel *in Parliament, by the Aſſent of the Prelates, Earls, and Barons, &c.*

The *Statute* made at *York* 9 *Edw.* 3. goeth thus: *Whereas the Knights, Citizens, and Burgeſſes defired Our Sovereign Lord the King in His Parliament by their Petition, &c. Our Sovereign Lord the King, deſiring the profit of His People, By the Aſſent of His Prelates, Earls, Barons, and other Nobles of His Realm, and by the Advice of* His Councel *being there, Hath Ordained.*

25. *Edw.* 3. In the Statute of Purveyors, where the *King, at the requeſt of the Lords and Commons, made a Declaration what Offences ſhould be adjudged Treaſon*: It is there further ſaid, *if per-caſe any man ride Armed with Men of Arms againſt any other to ſlay him, or rob him, It is not the* Mind of the King, or of His Councel: *that in ſuch caſes it ſhall be adjudged Treaſon.* By this Statute it appears, that even

even in the caſe of *Treaſon*, which is the Kings own Cauſe, as, *whereas a man doth compaſs, or imagine the Death of Our Lord the King, or a man do wage War againſt Our Lord the King in His Realm, or be adherent to the Kings Enemies in his Realm, giving to them Aid or Comfort in the Realm, or elſewhere*; in all theſe caſes it is the *Kings Declaration onely* that makes it to be Treaſon: and though it be ſaid, that *Difficult points of Treaſon ſhall be brought and ſhewed to the King, and His Parliament*, yet it is ſaid, it *is the mind of the King and his Councel, that determines what ſhall be adjudged Treaſon, and what Felony, or Treſpaſs.*

27 *Edw.* 3. the Commons preſenting a Petition to the King which the *Kings Councel* did miſlike, were content thereupon to amend and explain their Petition: the Petition hath theſe words, *To their moſt redoubted Sovereign Lord the King, Praying, Your ſaid Commons, that whereas they have prayed him to be diſcharged of all manner of Articles of the Eyre &c. which Petition ſeemeth to his Councel to be prejudicial unto him, and in Diſinheriſon of his Crown if it were ſo generally granted. His ſaid Commons not willing nor deſiring to demand things of Him, or of his Crown perpetually, as of Eſcheats, &c. But of Treſpaſſes, Miſpriſions, Negligences, Ignorances, &c.*

And as in Parliaments the Kings Councel were of Supereminent Power, ſo out of Parliament Kings made great Uſe of them.

King *Edw.* 1. finding that *Bogo de Clare* was diſcharged of an Accuſation brought againſt him in Parliament, commanded him nevertheleſs to appear *before him and his Councel, ad faciendum & recipiendum quod per Regem & ejus Concilium fuerit*

*faciendum*, and ſo proceeded to the Examination of the whole Cauſe, 8 *Edw.* 1.

*Edw.* 3. In the Star-chamber (which was the ancient Councel-table at *Weſtminſter*) upon the complaint of *Eliz. Audley*, commanded *James Audley* to appear before *Him* and *His Councel*, and determined a Controverſie between them, touching Land contained in her Jointure, *Rot. clauſ. de An.* 41 *Edw.* 3.

*Hen.* 5. In a Suit before *Him and His Councel*, For the Titles of the Manors of *Serre* and St. *Lawrence* in the Iſle of *Thanet* in *Kent*, took order for the Sequeſtring the Profits till the Right were tried.

*Hen.* 6. commanded the Juſtices of the Bench to ſtay the Arraignment of one *Verney* in *London*, till they had other Commandment from *Him and His Councel*, 34 *Hen.* 6. *rot.* 37. *in Banco.*

*Edw.* 4. and his Councel in the Star-Chamber heard the Cauſe of the Maſter and poor Brethren of Saint *Leonard's* in *York*, complaining that Sir *Hugh Haſtings*, and others, withdrew from them a great part of their Living, which conſiſted chiefly upon the having of a Thrave of Corn of every Plow-land within the Counties of *York*, *Weſtmorland*, *Cumberland*, and *Lancaſhire*, *Rot. pat. de an.* 8. *Edw.* 4. *part.* 3. *memb.* 14.

*Hen.* 7. *and his Councel* in the Star-Chamber, decreed, that *Margery* and *Florence Becket* ſhould ſue no further in their cauſe againſt *Alice Radley* Widow, for Lands in *Wolwich* and *Plumſted* in *Kent*, for as much as the matter had been heard firſt before the *Councel of Edw.* 4. after that before the Preſident of the Requeſts of that King *Hen.* 7. and then laſtly before the *Councel of the ſaid King*, 1 *Hen.* 7.

In

In the time of *Hen.* 3. an *Order* or *Proviſion* was made by the *Kings Councel*, and it was pleaded at the Common Law in Bar to a Writ of Dower; the Plaintifs Atturney could not deny it, and thereupon the Judgment was, *ideo ſine die.* It ſeems in thoſe days an Order of the Kings Councel, was either parcell of the Common Law, or above it.

Alſo we may find, the Judges have had Regard, that before they would reſolve or give Judgment in new Caſes, they conſulted with the Kings Privy Councel.

In the caſe of *Adam Brabſon* who was aſſaulted by *R. W.* in the Preſence of the Juſtices of Aſſiſe at *Weſtminſter*, the Judges would have the *Advice of the Kings Councel*: for in a like Caſe, becauſe *R. C.* did ſtrike a Juror at *Weſtminſter* which paſſed againſt one of his Friends, *It was adjudged by all the Councel that his right hand ſhould be cut off, and his Lands and Goods forfeited to the King.*

*Green* and *Thorp* were ſent by the Judges to the *Kings Councel*, to demand of them whether by the *Stat.* of 14 *Edw.* 3. 16. a word may be amended in a Writ, and it was anſwered that a word may be well amended, although the *Stat.* ſpeaks but of a Letter or Syllable.

In the Caſe of Sir *Thomas Ogthred*, who brought a *Formedon* againſt a poor man and his Wife; they came and yielded to the Demandant, which ſeemed ſuſpitious to the Court; whereupon Judgment was ſtaid, and *Thorp* ſaid that in the like caſe of *Giles Blacket* it was ſpoken of in Parliament, and we were commanded that when any like ſhould come we ſhould not go to Judgment without good Advice; therefore the Judges Concluſion was, *Sues au coun-*

*ſeil & comment ils voilent que nous devomus faire, nous volums faire, & autrement nient en ceſt caſe*; ſue to the Councel, and as they will have us to do, we will do; and otherwiſe not in this Caſe, 39 *Edw.* 3.

Thus we ſee the Judges themſelves were guided by the *Kings Councel*, and yet the Opinions of Judges have guided the Lords in Parliament in Point of Law.

All the Judges of the Realm, Barons of Exchequer, of the Quoif; the Kings learned Councel, and the Civilians, Maſters of Chancery, are called Temporal Aſſiſtants by Sir *Edw. Coke*, and though he deny them Voices in Parliament, yet he confeſſeth, that by their Writ they have Power both to *treat, and to give Councel.* I cannot find that the Lords have any other Power by their Writ: the Words of the Lords Writ are, *That you be preſent with Us the Prelates, Great men, and Peers, to treat and give your Counſel*: The words of the Judges Writ are, *that you be preſent with Us, and others of the Counſel* (and ſometimes with *Us* only) *to treat and give your Counſel.*

The Judges uſually joyned in Committees with the Lords in all Parliaments, even in Queen *Eliz.* Reign, untill her 39th Year; and then upon the 7th of *November*, the Judges were appointed to *attend the Lords.* And whereas the Judges have Liberty in the upper Houſe it ſelf, upon Leave given them by the L. Keeper, to cover themſelves, now at Committees they ſit always uncovered.

The Power of Judges in Parliament is beſt underſtood, if we conſider how the judicial Power of *Peers* hath been exerciſed in matter of Judicature: we may find it hath been the Practice, that

that though the Lords in the Kings Abſence give Judgment in Point of Law, yet they are to be directed and regulated by the Kings Judges, who are beſt able to give Direction in the difficult Points of the Law; which ordinarily are unknown to the Lords. And therefore, if any Errour be committed in the *Kings Bench*, which is the higheſt ordinary Court of Common Law in the Kingdom, that Errour muſt be redreſſed in Parliament. And the Manner is, ſaith the Lord Chancellor *Egerton*, *If a Writ of Errour be ſued in Parl. upon a Judgment given by the Judges in the Kings Bench, the Lords of the higher* Houſe *alone, (without the Commons) are to examine the Errours. The Lords are to proceed according to the Law, and for their Judgments therein they are to be informed by the Advice and Councel of the Judges, who are to inform them what the Law is, and to direct them in their Judgment; for the Lords are not to follow their own Diſcretion or Opinion otherwiſe.*

28 *Hen. 6.* the Commons made Sute *that W. de la Pool D. of Suffolk, ſhould be committed to Priſon for many Treaſons, and other Crimes; the Lords of the higher* Houſe *were doubtful what Anſwer to give; the Opinion of the Judges was demanded, their Opinion was, that he ought not to be committed, for that the Commons did not charge him with any particular Offence, but with general Reports and Slanders:* this Opinion was allowed.

31. *Hen. 6.* A Parliament being prorogued, in the Vacation, the *Speaker of the* Houſe *of Commons* was condemned in a thouſand Pounds Damages in an Action of Treſpaſs, and committed to Priſon in Execution for the ſame: when the Parliament was

was re-aſſembled, the Commons made ſute to the King, and Lords, to have their Speaker delivered. The Lords demanded the Opinion of the Judges, whether he might be delivered out of Priſon by Privilege of Parliament; upon the Judges Anſwer it was concluded, that *the Speaker ſhould remain in Priſon according to the Law, notwithſtanding the Privilege of Parliament, and that he was Speaker*; which Reſolution was declared to the Commons by *Moyle* the Kings Serjeant at Law, and the Commons were commanded in the Kings name by the Biſhop of *Lincoln* (in the abſence of the Arch-biſhop of *Canterbury*, then Chancellor) to chuſe another Speaker.

7 *Hen.* 8. A Queſtion was moved in Parliament, *Whether Spiritual Perſons might be convented before Temporal Judges for criminal Cauſes?* there Sir *John Fineux* and the other Judges delivered their Opinion, *that they might and ought to be; and their Opinion allowed and maintained by the King and Lords, and Dr.* Standiſh *who before had holden the ſame Opinion, was delivered from the Biſhops.*

I find it affirmed, *that in Cauſes which receive Determination in the Houſe of Lords, the King hath no Vote at all, no more than in other Courts of miniſterial Juriſdiction.* True it is, the King hath no Vote at all if we underſtand by *Vote*, a *Voice among others*: for he hath no partners with *Him* in giving Judgement. But if by *no Vote* is meant *he* hath no Power to judge; we diſpoil him of his Sovereignty: It is the chief Mark of Supremacy to judge in the higheſt Cauſes, and laſt Appeals. This the Children of *Iſrael* full well underſtood, when they petitioned for a *King to judge them*; if the *dernier reſort* be to the Lords alone, then they have the Supremacy.

cy. But as *Moſes* by chuſing Elders to judge in ſmall Cauſes, did not thereby loſe his Authority to be Judge himſelf when he pleaſed, even in the ſmalleſt matters; much leſs in the greateſt, which he reſerved to himſelf: ſo Kings by delegating others to judge under them, do not thereby denude themſelves of a Power to judge when they think good.

There is a Diſtinction of theſe times, that *Kings themſelves may not judge, but they may ſee and look to the Judges, that they give Judgment according to Law*, and for this Purpoſe only (as ſome ſay) Kings may ſometimes ſit in the Courts of Juſtice. But it is not poſſible for Kings to ſee the Laws executed, except there be a Power in Kings both to judge when the Laws are duely executed, and when not; as alſo to compell the Judges if they do not their Duty. Without ſuch Power a King ſitting in Courts is but a Mockery, and a Scorn to the Judges. And if this Power be allowed to Kings, then their Judgments are ſupream in all Courts. And indeed our *Common Law to this Purpoſe doth preſume that the King hath all Laws within the Cabinet of His Breaſt, in Scrinio pectoris*, ſaith *Crompton's* Juriſdiction. 108.

When ſeveral of our Statutes leave many things to the *Pleaſure of the King*, for us to interpret all thoſe Statutes of the *Will and Pleaſure of the Kings Juſtices only*, is to give an abſolute Arbitrary Power to the Juſtices in thoſe Caſes wherein we deny it to the King.

The Statute of 5 *Hen.* 4. *c.* 2. makes a Difference betweeen the *King*, and the *Kings Juſtices*, in theſe words, *Divers notorious Felons be indicted of divers Felonies, Murders, Rapes: and as well before the Kings Juſtices, as before the King himſelf, arreigned of the ſame Felonies.*

I read

I read, that in *An.* 1256. *Hen.* 3. ſate in the *Exchequer, and there ſet down Order for the Appearance of Sheriffs, and bringing in their Accounts; there was five Marks ſet on every Sheriffs Head for a Fine, becauſe they had not diſtrained every Perſon that might diſpend fifteen pounds Lands by the Year, to receive the Order of Knighthood, according as the ſame Sheriffs were commanded.*

In *Michaelmas* Term, 1462. *Edw.* 4. *ſate three dayes together in open Court in the* Kings Bench.

For this Point there needs no further Proofs, becauſe Mr. *Pryn* doth confeſs, that *Kings themſelves have ſate in Perſon in the* Kings *Bench, and other Courts, and there given Judgment*, p. 32. Treachery and Diſloyalty, &c.

Notwithſtanding all that hath been ſaid for the Legiſlative and Judicial Power of Kings, Mr. *Pryn* is ſo far from yielding the King a Power to make Laws, that he will not grant the King a power to hinder a Law from being made; that is, he allows Him not a *Negative Voice* in moſt caſes, which is due to every other, even to the Meaneſt Member of the Houſe of Commons in his Judgment.

To prove the King hath not a *Negative Voice*, his main, and in truth, his only Argument inſiſted on, is a *Coronation-Oath*, which is ſaid anciently ſome of our Kings of *England* have taken, wherein *they grant to defend and protect the juſt Laws and Cuſtoms, which the Vulgar hath, or ſhall chuſe*: *Juſtas Leges & Conſuetudines quas vulgus elegerit*: Hence Mr. *Pryn* concludes, that the King cannot deny any Law which the Lords and Commons ſhall make choice of; for ſo he will have *vulgus* to ſignifie.

Though

Though neither our *King*, nor many of His Predeceſſors ever took this Oath, nor were bound to take it, for ought appears; yet we may admit that our King hath taken it; and anſwer, we may be confident, that neither the Biſhops, nor Privy Councel, nor Parliament, nor any other whoſoever they were that framed, or penn'd this Oath, ever intended in this word *Vulgus* the *Commons* in Parliament, much leſs the *Lords:* they would never ſo much diſparage the Members of Parliament, as to diſgrace them with a Title both baſe and falſe: it had been enough, if not too much, to have called them *Populus*, the *People*; but *Vulgus*, the *Vulgar*, the *rude Multitude* (which hath the Epithet of *Ignobile Vulgus*) is a word as diſhonourable to the Compoſers of the Oath to give, or for the King to uſe, as for the Members of the Parliament to receive; it being moſt falſe: for the *Peers* cannot be *Vulgus*, becauſe they are the prime Perſons of the Kingdom: next, the Knights of the Shires are, or ought to be *notable* Knights, or *notable* Eſquires, *or* Gentlemen, *born in the Counties, as ſhall be able to be* Knights: then *the* Citizens *and* Burgeſſes *are to be moſt ſufficient*, none of theſe can be *Vulgus*: even thoſe Free-holders that chuſe Knights, are the beſt and ableſt men of their Counties; there being for every Free-holder, above ten of the Common People to be found to be termed the Vulgar: Therefore it reſts that *vulgus* muſt ſignifie the *vulgar* or *common People*, and not the *Lords and Commons.*

But now the Doubt will be, what the Common People, or *vulgus*, out of Parliament, have to do to chuſe Laws? The Anſwer is eaſie and ready; there

there goeth before *quas vulgus*, the Antecedent *Conſuetudines*, that is, *the Cuſtoms which the Vulgar hath, or ſhall chuſe.* Do but obſerve the Nature of *Cuſtom*, and it is the *Vulgus* or *Common People only who chuſe Cuſtoms*: Common Uſage time out of mind creates a Cuſtom, and the commoner an Uſage is, the ſtronger and the better is the Cuſtom: no where can ſo common an Uſage be found, as among the *Vulgar*, who are ſtill the far greateſt part of every Multitude: if a Cuſtom be common through the whole Kingdom, it is all one with the Common Law in *England*, which is ſaid to be *Common Cuſtom.* Thus in plain Terms to protect the *Cuſtoms which the Vulgar chuſe, is to ſwear to protect the Common Laws of* England.

But grant that *Vulgus* in the Oath, ſignifies *Lords* and *Commons*, and that *Conſuetudines* doth not ſignifie Cuſtoms, but Statutes, (as Mr. *Pryn* for a deſperate Shift affirms,) and let *elegerit* be the Future, or Preterperfect Tenſe, even which Mr. *Pryn* pleaſe, yet it cannot exclude the *Kings negative Voice*; for as *Conſuetudines* goeth before *quas vulgus*, ſo doth *juſtas* ſtand before *leges & conſuetudines*: ſo that not all Laws, but only all juſt Laws are meant. If the ſole Choice of the *Lords* and *Commons*, did oblige the King to protect their Choice, without Power of Denial, what Need, or why is the Word *juſtas* put in, to raiſe a Scruple that ſome Laws may be unjuſt? Mr. *Pryn* will not ſay that a Decree of a General Councel, or of a Pope is infallible, nor (I think) a Bill of the Lords and Commons is infallible, juſt, and impoſſible to erre; if he do, Sir *Edward Coke* will tell him that *Parliaments have been utterly deceived, and that in caſes of greateſt Moment, even in caſe*

*caſe of High Treaſon*: and he calls the Statute of 11 *Hen.* 7. *an unjuſt and ſtrange Act.* But it may be Mr. *Pryn* will confeſs that Laws choſen by the *Lords* and *Commons* may be unjuſt, ſo that the *Lords* and *Commons* themſelves may be the Judges of what is juſt, or unjuſt. But where a King by Oath binds his Conſcience to *protect juſt Laws*, it concerns him to be ſatisfied in his own Conſcience, that they be juſt, and not by an implicite Faith, or blind Obedience: no man can be ſo proper a Judge of the Juſtneſs of Laws, as he whoſe Soul muſt lie at the Stake for the Defence and Safeguard of them.

Beſides, in this very Oath the King doth ſwear, to do *equal and right Juſtice and Diſcretion, in Mercy and Truth in all His Judgments: facies fieri in omnibus judiciis tuis æquam & rectam juſtitiam & diſcretionem in Miſericordia & Veritate*: if we allow the King *Diſcretion* and *Mercy in his Judgments*, of Neceſſity he muſt judge of the Juſtneſs of the Laws.

Again, the clauſe of the Oath, *quas vulgus elegerit*, doth not mention the aſſenting unto, or *granting any new Laws*, but of *holding, protecting, and ſtrengthning with all his Might, the juſt Laws that were already in Being:* there were no need of Might or Strength, if aſſenting to new Laws were there meant.

Some may wonder, why there ſhould be ſuch Labouring to *deny the King a negative Voice*, ſince a negative Voice is in it ſelf ſo poor a thing; that if a man had all the Negative Voices in the Kingdom, it would not make him a King; nor give him Power to make one Law: a *negative Voice* is but a *privative* Power, that is, no Power at all to do or act

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any thing; but a Power only to hinder the Power of another. *Negatives* are of ſuch a malignant or deſtructive Nature, that if they have nothing elſe to deſtroy, they will, when they meet, deſtroy one another, which is the reaſon why two Negatives make an Affirmative, by deſtroying the Negation which did hinder the Affirmation: A King with a *Negative Voice* only, is but like a Syllogiſme of *pure negative Propoſitions*, which can conclude nothing. It muſt be an *Affirmative Voice* that makes both a *King*, and a *Law*, and without it there can be no imaginable Government.

The reaſon is plain why the *Kings negative Voice* is ſo eagerly oppoſed: for though it give the King no Power to do any thing; yet it gives him a Power to hinder others: though it cannot make Him a King, yet it can help him to keep others from being Kings.

For Concluſion of this Diſcourſe of the *negative Voice of the King*, I ſhall oppoſe the Judgment of a *Chief Juſtice* of *England*, to the Opinion of him that calls himſelf an *utter Bariſter of Lincolns Inn*, and let others judge who is the better Lawyer of the two: the words are *Bracton's*, but concern Mr. *Pryn* to lay them to heart; *Concerning the Charters and Deeds of Kings, the Juſtices nor private men neither ought, nor can diſpute; nor yet if there riſe a Doubt in the Kings Charter, can they interpret it; and in doubtful and obſcure Points, or if a word contain two Senſes, the Interpretation, and Will of Our Lord the King is to be expected, ſeeing it is his part to interpret, who makes the Charter*: full well Mr. *Pryn* knows, that when *Bracton* writ, the Laws that were then made, and ſtrived for, were called the *Kings Charters*, as *Magna Charta*, *Charta de Foreſta*, and others; ſo that in

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*Bracton's* Judgment the *King* hath not only a *Negative Voice* to hinder, but an *Affirmative*, to make a Law, which is a great deal more than Maſter *Pryn* will allow him.

Not only the *Law-maker*, but alſo the *ſole Judge of the People is the King*, in the Judgment of *Bracton*; theſe are his words: *Rex & non alius debet judicare, ſi ſolus ad id ſufficere poſſit*, the King and no other ought to judge, if He alone were able. Much like the words of *Bracton*, ſpeaketh *Briton*, where, after that he had ſhewed that the *King is the Viceroy of God*, and that He hath diſtributed his Charge into ſundry portions, becauſe He alone is not ſufficient to hear all Complaints of His People, then he addeth theſe words, in the Perſon of the King: *Nous volons que noſtre juriſdiction ſoit ſur touts Juriſdictions, &c. We Will that Our Juriſdiction be above all the Juriſdictions of Our Realm, ſo as in all manner of Felonies, Treſpaſſes, Contracts, and in all other actions Perſonal or Real We have Power to yield, or cauſe to be yielded, ſuch Judgments as do appertain without other Proceſs, whereſoever we know the right Truth as Judges.*

Neither was this to be taken, ſaith Mr. *Lambard*, to be meant of the *Kings Bench*, *where there is only an imaginary preſence of His Perſon*, but it muſt neceſſarily be underſtood of a *Juriſdiction remaining and left in the King's Royal Body and Breſt, diſtinct from that of His Bench, and other ordinary Courts*; becauſe he doth immediately after, ſeverally ſet forth by themſelves, as well the authority of the *Kings Bench*, as of the other Courts.

And that this was no new-made Law, Mr. *Lambard* puts us in mind of a *Saxon Law of King* Ed-

gars. *Nemo in lite Regem appellato*, &c. *Let no man in Suit appeal unto the King, unleſs he cannot get Right at home, but if that Right be too Heavy for him, then let him go to the King to have it eaſed.* By which it may evidently appear, that even ſo many years ago *there might be Appellation made to the Kings Perſon, whenſoever the Cauſe ſhould enforce it.*

The very like Law in Effect is to be ſeen in the Laws of *Canutus* the *Dane*, ſometimes King of this Realm, out of which Law Maſter *Lambard* gathers, that the King *Himſelf had a High Court of Juſtice, wherein it ſeemeth He ſate in Perſon*, for the words be, *Let him not ſeek to the King*, and the ſame Court of the King did judge not only according to meer Right and Law, but alſo after Equity and good Conſcience.

For the Cloſe, I ſhall end with the Suffrage of our late Antiquary Sir *Henry Spelman*, in his *Gloſſary*, he ſaith, *Omnis Regni Juſtitia ſolius Regis eſt*, &c. *All Juſtice of the Kingdom is only the King's, and He alone, if He were able, ſhould Adminiſter it; but that being impoſſible, He is forced to delegate it to Miniſters, whom he bounds by the limits of the Laws; the poſitive Laws are only about Generals; in particular Caſes, they are ſometimes too ſtrict, ſometimes too remiſs; and ſo, oft Wrong inſtead of Right will be done, if we ſtand to ſtrict Law: alſo Cauſes hard and difficult daily ariſe, which are comprehended in no Law-books, in thoſe there is a neceſſity of running back to the King, the Fountain of Juſtice, and the Vicegerent of God himſelf, who in the Commonwealth of the Jews took ſuch Cauſes to His own cogniſance, and left to Kings not only the Example of ſuch Juriſdiction, but the Prerogative alſo.*

*Of*

# *Of Privilege of* Parliament.

WHat need all this ado, will ſome ſay, to ſift out what is compriſed in the Writ for the Election of the Commons to Parliament, ſince it is certain, though the *Writ* doth not, yet *Privilege of Parliament* gives ſufficient Power for all Proceedings of the Two Houſes? It is anſwered, that what ſlight Eſteem ſoever be made of the Writ, yet in all other caſes the *Original* Writ is the Foundation of the whole buſineſs, or action: and to vary in Subſtance from the Writ, makes a nullity in the Cauſe, and the Proceedings thereupon: and where a Commiſſioner exerciſeth more Power than is warranted by his Commiſſion, every ſuch Act is void, and in many Caſes puniſhable: yet we will lay aſide the Writ, and apply our ſelves to conſider the Nature of *Privilege of Parliament.* The Task is the more difficult, for that we are not told what the number of Privileges are, or which they be; ſome do think that as there be dormant Articles of Faith in the *Roman* Church, which are not yet declared; ſo there be likewiſe Privileges dormant in the Houſe of Commons, not yet

revealed, we muſt therefore be content in a generality to diſcourſe of the Quality or Condition of Privilege of Parliament, and to confine our ſelves to theſe three points:

1. That Privilege of Parliament gives no power; but only helps to the execution of the Power given by the Writ.

2. That the Free-holders by their Elections give no Privilege.

3. That Privilege of Parliament is the Gift of the King.

Firſt, The End or Scope of Privilege of Parliament is not to give any Power to do any publick Act, not warranted by the Writ: but they are intended as Helps only to enable to the Performance of the Duty enjoyned, and ſo are ſubſervient to the Power compriſed in the Writ: For Inſtance, the *grand Privilege of Freedom from Arreſts* doth not give any Power at all to the *Houſe of Commons* to do any act; but by taking away from the Free-holders and other Subjects the Power of Arreſts, the Commons are the better inabled to attend the Service to which they are called by the King.

In many other Caſes the Servants, or Miniſters of the King are privileged, and protected much in the ſame Nature. The Ser-

Servants in houſhold to the King may not be arreſted without ſpecial Licence: Alſo the Officers of the Kings Courts of Juſtice, have a Privilege not to be ſued in any other Court but where they ſerve and attend; and to this Purpoſe they are allowed a *Writ of Privilege.* Likewiſe all ſuch as ſerve the King in his Wars, or are imployed on forreign Affairs for him, are protected from Actions and Sutes. Nay the Kings Protection deſcends to the privileging even of *Laundreſſes, Nurſes, and Midwives*, if they attend upon the Camp, as Sir *Edw. Coke* ſaith, *quia Lotrix, ſeu Nutrix, ſeu obſtetrix.* Beſides the King protects his Debtors from Arreſts of the Subject till his own Debts be paid.

Theſe ſorts of Protections are Privileges the Common Law takes notice of, and allows: and hath ſeveral Diſtinctions of them; and ſome are *Protections, quia profecturus*, and others are, *quia moraturus:* ſome are with a Clauſe of *volumus* for Stay of Suits: others with a Clauſe of *Nolumus* for the ſafety of mens Perſons, Servants, and Goods: and the Kings Writs do vary herein according to the Nature of the Buſineſs.

But none of theſe Privileges or Protections do give any Power; they are not *po-*

*ſitive*, but *privative:* they take away and deprive the Subject of the Power, or Liberty to arreſt, or ſue, in ſome caſes only: no Protection or Privilege doth defend in point of *Treaſon*, *Felony*, or *Breach* of the *Peace:* Privileges are directly contrary to the Law, for otherwiſe they ſhould not be Privileges, and they are to be interpreted in the ſtricteſt manner, as being *odious and contrary* to Law: we ſee the Uſe of Privileges; they do but ſerve as a Diſpenſation againſt Law, intended originally, and principally for the expediting of the Kings Buſineſs; though ſecondarily, and by accident there do ſometimes redound a Benefit by them to the Parties themſelves that are protected. Strictly, and properly every Privilege muſt be againſt a publick or common Law, for there is no Uſe or Need of a *private Law* to protect, where there is no *publick Law* to the contrary: Favours and Graces which are only *beſides*, and *not againſt* the Law, do not properly go under the name of *Privileges*, though common Uſe do not diſtinguiſh them: I know no other Privilege that can be truly ſo called, and to belong to the Houſe of Commons, which is ſo vaſt and great, as this Privilege of their *Perſons*, *Servants*, and *Goods:* this being indeed againſt the Common Law,

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and doth concern the whole Kingdom to take notice of it, if they muſt be bound by it.

Touching this grand Privilege of Freedom from Arreſts, I read that in the 33 *Hen.* 8. the Commons did not proceed to the Puniſhment of Offenders for the breach of it, untill the Lords referred the Puniſhment thereof to the Lower Houſe. The Caſe is thus reported, *George Ferrers* Gentleman, Servant to the King, and Burgeſſe for *Plymouth*, going to the Parliament Houſe was arreſted in *London*, by Proceſs out of the Kings Bench for Debt, wherein he had before been condemned as Surety for one *Welden* at the Sute of one *White*: which Arreſt ſignified to Sir *Thomas Moyl* Speaker, and to the reſt; the Serjeant (called *Saint-Johns*) was ſent to the Counter in *Bread-ſtreet* to demand *Ferrers*: The Officer of the Counter refuſed to deliver him, and gave the Serjeant ſuch ill Language that they fall to an Affray: the Sheriff coming, taketh the Officers part, the Serjeant returned without the Priſoner: This being related to the Speaker and Burgeſſes, they would ſit no more without their Burgeſs; and riſing, repaired to the Upper Houſe, where the Caſe was declared by the Speaker before Sir *Thomas Audley Chancellor, and the Lords and*

*Judges* there aſſembled, who judging *the Contempt to be very great, referred the Puniſhment thereof to the Houſe of Commons it ſelf.*

This Privilege of Freedom from Arreſts is the only Privilege which Sir *Edward Coke* finds to belong to the Houſe of Commons; he cannot, or at leaſt he doth not, ſo much as name any other in his Section of the *Privileges of Parliament*: neither doth he bring ſo much as one Precedent for the Proof of this one Privilege for the Houſe of Commons; which may cauſe a Doubt that this ſole Privilege is not ſo clear as many do imagine. For in a Parliament in the 27 *Eliz. Richard Coke*, a Member, being ſerved with a *Subpœna of Chancery, the Lord Chancellor thought the Houſe had no ſuch Privilege for Subpœna's as they pretended*; neither would he allow of any Precedents of the Houſe committed unto them, formerly uſed in that Behalf, unleſs the Houſe of Commons could alſo prove the ſame to have been likewiſe thereupon allowed, and ratified alſo by Precedents in the Court of Chancery.

In the 39 of *Eliz.* Sir *Edw. Hobby*, and Mr. *Brograve*, Attorney of the Dutchy, were ſent by the Houſe to the Lord Keeper, in the name of the whole Houſe, to *require* his Lordſhip to re-

revoke two Writs of *Subpœna's*, which were ſerved upon M. *Th. Knevit*, a Member of the Houſe, ſince the Beginning of Parliament. The Lord Keeper demanded of them, whether they were appointed by any adviſed Conſideration of the Houſe, to deliver this Meſſage unto him with the word *Required*, in ſuch manner as they had done, or no: they anſwered his Lordſhip, yea: his Lordſhip then ſaid, as he thought reverently and honourably of the Houſe, and of their Liberties, and Privileges of the ſame, ſo *to revoke the ſaid Subpœna's in that ſort, was to reſtrain Her Majeſty in Her greateſt Power, which is, Juſtice in the Place wherein he ſerveth under Her*, and therefore he concluded, as they had *required* him to revoke his Writ, ſo he did *require to deliberate.*

Upon the 22 of *February*, being Wedneſday, 18 *Eliz.* Report was made by Mr. Attorney of the Dutchy, upon the Committee, for the delivering of one Mr. *Hall's* man; that the Committee found *no Precedent for ſetting at large by the Mace any Perſon in Arreſt but only by Writ*, and that by divers Precedents of Records peruſed by the ſaid Committee, it appeareth that every Knight, Citizen or Burgeſs which doth require Privilege, hath uſed in that caſe to take a Corporal Oath before the Lord Chancellor,

lor, or Lord Keeper, that *the party* for whom ſuch Writ is prayed, *Came up with him, and was his Servant at the time of the Arreſt made.* Thereupon M. *Hall* was moved by the Houſe to repair to the Lord Keeper, and make Oath, and then take a Warrant for a Writ of Privilege for his Servant.

It is accounted by ſome to be a Privilege of Parliament to have power to Examine *Miſdemeanours* of Courts of Juſtice, and Officers of State: yet there is not the meaneſt Subject but hath liberty, upon juſt cauſe, to queſtion the miſdemeanour of any Court or Officer, if he ſuffer by them; there is no Law againſt him for ſo doing; ſo that this cannot properly be called a Privilege, becauſe it is not againſt any publick Law: It hath been eſteemed a great Favour of *Princes* to permit ſuch Examinations: For, when the Lords were diſpleaſed with the Greatneſs of *Pierce Gaveſton*, it is ſaid, that in the next Parliament, *the whole Aſſembly obtain of the King to draw Articles of their Grievances*, which they did. Two of which Articles were, Firſt, that *all Strangers ſhould be baniſhed the Court and Kingdom*: of which *Gaveſton* was one. Secondly, that *the buſineſs of the State ſhould be treated of by the Councel of the Clergy and* Nobles.

In

In the Reign of King *Henry* the ſixth, one *Mortimer*, an Inſtrument of the Duke of *York*, by promiſing the *Kentiſh* men a *Reformation*, and *freedom from Taxations*, wrought with the people, that they drew to a Head, and made this *Mortimer* (otherwiſe *Jack Cade*) their Leader: who ſtyled himſelf Captain *Mend-all*: He preſents to the Parliament the Complaints of the Commons, and he petitions that the Duke of *York* and ſome other Lords might be received by the King into favour, by the undue Practices of *Suffolk* and his Complices, commanded from his Preſence; and that all their Oppoſites might be baniſhed the Court, and put from their Offices, and that there might be a general amotion of corrupt Officers: Theſe Petitions are ſent from the *Lower Houſe to the Upper*, and from thence committed *to the Lords of the Kings Privy Councel*, who, having examined the particulars, *explode them as frivolous, and the Authors of them to be preſumptuous Rebels.*

Concerning *Liberty, or freedom of Speech*, I find, that at a Parliament at *Black Friars* in the 14 of *Henry* the *Eighth*, Sir *Tho. More* being choſen Speaker of the Houſe of Commons: He *firſt diſabled himſelf, and then petitioned the King, that if in Communication*

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*and Reaſoning, any man in the Commons Houſe ſhould ſpeak more largely than of duty they ought to do, that all ſuch Offences ſhould be pardoned, and to be entred of Record; which was granted.* It is obſervable in this Petition, that liberty or freedom of Speech is not a power for men to ſpeak what they will, or pleaſe, in Parliament; but a Privilege not to be puniſhed, but pardoned for the offence of ſpeaking *more largely than in duty ought to be*; which in an equitable conſtruction muſt be underſtood of raſh, unadviſed, ignorant, or negligent Eſcapes, and Slips in Speech: and not for wilful, malicious Offences in that kind; And then the Pardon of the King was deſired to be upon Record, that it might be pleaded in Bar to all Actions. And it ſeemeth that *Ric. Strood* and his Complices, were not thought ſufficiently protected for their free Speech in Parliament, unleſs their Pardon were confirmed by the King in Parliament, for there is a printed *Statute* to that purpoſe in *H.* 8^ths time.

Touching the freedom of Speech, the Commons were warned in Q. *Eliz.* dayes not to meddle with the *Queens Perſon, the State, or Church-government.* In her time the Diſcipline of the Church was ſo ſtrict, that the *Litany* was read every morning in the Houſe of Commons, during the Parliament, and when the Com-

Commons firſt ordered to have a *Faſt in the Temple upon a Sunday*, the Queen hindred it.

21 *Jan. Saturday*, 23 *Eliz.* the Caſe is thus reported: Mr. *Paul Wentworth* moveth for a Publick ſet Faſt, and for a Preaching every morning at 7 of the clock, before the Houſe ſate: the Houſe was divided about the Faſt, 115 were for it, and an 100 againſt it; it was ordered, that *as many of the Houſe as conveniently could, ſhould on Sunday fortnight after, Aſſemble, and meet together in the* Temple-*Church, there to hear Preaching, and to joyn together in Prayer, with Humiliation and Faſting, for the Aſſiſtance of God's Spirit in all their Conſultations, during this Parliament, and for the Preſervation of the Queens Majeſty and Her Realms: And the Preachers to be appointed by the Privy Councel that were of the Houſe, that they may be Diſcreet, not medling with Innovation or Unquietneſs.* This Order was followed by a Meſſage from Her Majeſty to the Houſe, declared by Mr. Vice-chamberlain, that *Her Highneſs had a great Admiration of the raſhneſs of this Houſe, in committing ſuch an apparent Contempt of her expreſs Command, as to put in execution ſuch an Innovation, without Her privity, or pleaſure firſt known.* Thereupon Mr. Vice-chamberlain moved the Houſe *to make humble ſubmiſſion to Her Majeſty, acknowledging the ſaid Offence, and Contempt, craving a Remiſſion of the ſame, with a full pur-*

*purpoſe to forbear the Committing of the like hereafter:* and by the Conſent of the whole Houſe, Mr. Vice-chamberlain carried their Submiſſion to her Majeſty.

35 *Eliz.* Mr. *Peter Wentworth*, and Sir *Henry Bromley*, delivered a Petition to the Lord Keeper, deſiring the Lords of the upper Houſe to be Suppliants with them of the lower Houſe, unto her Majeſty *for entailing the Succeſſion of the Crown.* Whereof a Bill was ready drawn by them. Her Majeſty was highly diſpleaſed herewith, as contrary to her former ſtrait Command, and charged the Councel tò call the Parties before them: Sir *Thomas Henage* ſent for them, and after Speech with them, commanded them to forbear the Parliament, and not to go out of their ſeveral Lodgings; after, they were called before the Lord *Treaſurer*, the Lord *Buckhurſt*, and Sir *Thomas Henage*; Mr. *Wentworth* was committed by them to the Tower, Sir *Henry Bromley*, with Mr. *Richard Stevens*, to whom Sir *Henry Bromley* had imparted the Matter, were ſent to the *Fleet*, as alſo Mr. *Welch* the other Knight for *Worceſterſhire.*

In the ſame Parliament Mr. *Morrice*, Attorney of the Court of Wards, moved againſt the hard Courſes of the Biſhops, Ordinaries, and other Eccleſiaſtical Judges in their

their Courts, uſed towards ſundry Learned, and godly Miniſters and Preachers; and ſpake againſt Subſcription, and Oaths; and offer'd a Bill to be read againſt Impriſonment for refuſal of Oaths: Mr. *Dalton* oppoſed the Reading of it, as a thing expreſly againſt Her Majeſties Command, to meddle in: Doctor *Lewin* ſhewed, that Subſcription was uſed even at *Geneva*: At two of the clock the ſame day, the Speaker, Mr. *Coke*, (afterwards Sir *Edward Coke*) was ſent for to the Court, where the Queen Her ſelf gave him in Command a Meſſage to the Houſe: She told him, *It being wholly in Her Power to Call, to Determine, to Aſſent, or Diſſent to any thing done in Parliament: that the Calling of This was only, that the Majeſty of God might be more religiouſly obſerved, by compelling, by ſome ſharp Laws, ſuch as neglect that Service: and that the Safety of Her Majeſties Perſon, and the Realm might be provided for: It was not meant they ſhould meddle with matters of State, or Cauſes Eccleſiaſtical,* (for ſo Her Majeſty termed them) *ſhe wondred that any could be of ſo high Commandement, to attempt* (they were Her own words) *a thing ſo expreſly contrary to that which She had commanded: wherefore with this She was highly offended: And becauſe the words ſpoken by my Lord Keeper, are*

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*not now perhaps well remembred, or ſome be now here that were not then preſent. Her Majeſties preſent Charge and expreſs Command is, that no Bill touching the ſaid matter of State or Reformation in Cauſes Eccleſiaſtical, be exhibited; and upon my Allegiance* (ſaith Mr. Coke) *I am charged, if any ſuch Bill be exhibited, not to read it.* I have been credibly informed, that the Queen ſent a Meſſenger, or Serjeant at Arms, into the Houſe of Commons, and took out Mr. *Morrice*, and committed him to priſon: within few dayes after, I find Mr. *Wroth* moved in the Houſe, that they might be humble Suitors to Her Majeſty, that She would be pleaſed to ſet at liberty thoſe Members of the Houſe that were reſtrained. To this it was anſwered by the Privy Counſellors, that *Her Majeſty had committed them for Cauſes beſt known to Her ſelf, and to preſs Her Highneſs with this Suit, would but hinder them whoſe Good is ſought*: that *the Houſe muſt not call the Queen to account for what ſhe doth of Her Royal Authority: that the Cauſes for which they are reſtrained may be High and Dangerous: that Her Majeſty liketh no ſuch Queſtions; neither doth it become the Houſe to ſearch into ſuch matters.*

In the 39 *Eliz.* The Commons were told their Privilege was *Yea*, and *No*: and that Her

Her Majeſties Pleaſure was, that if the Speaker perceived any idle heads which would not ſtick to hazard their own Eſtates; which will meddle with reforming the Church, and transforming the Commonweal, and do exhibit Bills to that purpoſe; the Speaker ſhould not receive them till they were viewed and conſidered by thoſe, whom it is fitter ſhould conſider of ſuch things, and can better judge of them: and at the end of this Parliament, the Queen refuſed to paſs 48 Bills which had paſſed both Houſes.

In the 28 of *Eliz.* the Queen ſaid, *She was ſorry the Commons medled with chuſing and returning Knights of the Shire for* Norfolk, *a thing impertinent for the Houſe to deal withal, and only belonging to the Office and Charge of the Lord Chancellor, from whom the Writs iſſue, and are returned.*

4 *Hen.* 4. The 10 of *October*, the *Chancellor* before the *King* declared, *the Commons had ſent to the King, praying him that they might have Advice, and Communication with certain Lords about Matters of Buſineſs in Parliament, for the common good of the Realm:* which Prayer *Our Lord the King graciouſly granted, making Proteſtation, he would not do it of Duty, nor of Cuſtom, but of his ſpecial Grace at this time:* and therefore *Our Lord the King charged the Clark of the Parliament, that this*

*Proteſtation ſhould be entred on Record upon the Parliament-Roll:* which the King made known to them by the Lord *Say*, and his Secretary; *how that neither of Due nor of Cuſtom, our Lord the King ought to grant any Lords to enter into Communication with them, of Matters touching the Parliament, but by his ſpecial Grace at this time he hath granted their Requeſt in this Particular:* upon which matter, the ſaid Steward and Secretary made Report to the King in Parliament; that the ſaid *Commons knew well that they could not have any ſuch Lords to commune with them, of any Buſineſs of Parliament, without ſpecial Grace and Command of the King Himſelf.*

It hath heretofore been a queſtion, whether it be not an Infringing, and Prejudice to the Liberties and Privileges of the Houſe of Commons, for them to joyn in Conference with the Lords in Caſes of Benevolence, or Contribution, without a Bill.

In the 35 *Eliz.* on Tueſday the firſt of *March*, Mr. *Egerton*, Attorney general, and Doct. *Carey* came with a Meſſage from the Lords; their Lordſhips deſired to put the Houſe in Remembrance of the Speech delivered by the Lord Keeper, the firſt day for Conſultation and Proviſion of Treaſure, to be had aginſt the great and imminent Dangers

gers of the Realm; thereupon their Lordſhips did look to have ſomething from the Houſes, touching thoſe Cauſes before this time (and yet the Parliament had ſate but three dayes, for it began *Feb.* 26.) and therefore their Lordſhips had hitherto omitted to do any thing therein themſelves. And thereupon their Lordſhips deſired, that according to former laudable Uſages between both Houſes in ſuch like Caſes, a Committee of Commons may have Conference with a Committee of Lords, touching Proviſion of Treaſure againſt the great Dangers of the Realm, which was preſently reſolved by the whole Houſe, and they ſignified to their Lordſhips the willing, and ready Aſſent of the whole Houſe. At the Meeting, the Lords negatively affirm, not to aſſent to leſs than three Subſidies, and do inſiſt for a ſecond Conference. M. *Francis Bacon* yielded to the Subſidy, but oppoſed the joyning with the Lords, as contrary to the Priviledges of the Houſe of Commons; thereupon the Houſe reſolved to have no Conference with the Lords, but to give their Lordſhips moſt humble and dutiful Thanks with all Reverence for their favourable and courteous Offer of Conference, and to ſignifie that the Commons cannot in thoſe Caſes of Benevolence, or Contribution joyn

in conference with their Lordſhips, without prejudice to the Liberties and Privileges of the Houſe: and to requeſt their Lordſhips to hold the Members of this Houſe excuſed in their not-aſſenting to their Lordſhips ſaid Motion for Conference, for that ſo to have Aſſented without a Bill, had been contrary to the Liberties and Privileges of this Houſe, and alſo contrary to the former Precedents of the ſame Houſe in like caſes had. This Anſwer delivered to the Lords by the Chancellor of the Exchequer, their Lordſhips ſaid, they well hoped to have had a Conference according to their former Requeſt, and deſir'd to ſee thoſe Precedents by which the Commons ſeem to refuſe the ſaid Conference. But in concluſion it was agreed unto, upon the Motion of Sir *Walter Raleigh*, who moved, that without naming a Subſidy, it might be propounded in general words, to have a Conference touching the Dangers of the Realm, and the neceſſary Supply of Treaſure to be provided ſpeedily for the ſame, according to the Proportion of the Neceſſity.

In the 43 *Eliz.* Serjeant *Heal* ſaid in Parliament, *he marvail'd the Houſe ſtood either at the granting of a Subſidy or time of Payment, when all we have is her Majeſties, and She may lawfully at her Pleaſure take it from us; and that ſhe had as much right to all our Lands and Goods, as to any Revenue of the Crown; and he ſaid he could prove*

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*it by Precedents in the time of* H. 3. *K.* John *and* K. *Stephen.* The ground upon which this Serjeant at Law went, may be thought the ſame Sir *Edw. Coke* delivers in his *Inſtitutes*, where he ſaith, *the firſt Kings of this Realm had all the Lands of* England *in Demeſne, and the great Manors & Royaliſts they reſerved to themſelves, & of the remnant for the defence of the Kingdom enfeoffed the Barons:* from whence it appears, that no man holds any *Lands* but under a condition to defend the Realm; and upon the ſelfſame Ground alſo the Kings Prerogative is raiſed, as being a Preheminence, in caſes of Neceſſity, above, & before the Law of Property, or Inheritance. Certain it is, before the Commons were ever choſen to come to Parliament, Taxes or Subſidies were raiſed and paid without their gift. The great and long continued Subſidy of *Dane-gelt* was without any Gift of the Commons, or of any Parliament at all, that can be proved. In the 8 *H.* 3. a Subſidy of 2 Marks in Silver upon every Knights fee was granted to the *King* by the *Nobles*, without any Commons. At the paſſing of a Bill of Subſidies the words of the King are, *the King thanks his loyal Subjects, accepts their good Will, & alſo will have it ſo: le Roy remercie ſes loyaux Subjects, accept leur benevolence*, & auſi ainſi le veult: which laſt words of *ainſi le veult, the King wills it to be ſo*, are the only words that makes the Act of Subſidy a Law to bind every man to the Payment of it.

In the 39 *Eliz.* The Commons, by their Speaker, complaining of *Monopolies*, the Queen ſpake in private to the L. Keeper, who then made anſwer touching Monopolies, that *Her Majeſty hoped her dutiful and loving Subjects would not take away Her Prerogative, which is the chiefeſt Flower in her Garland, and the principal and head Pearl in Her Crown and Diadem*, but *that they will rather leave that to Her Diſpoſition.*

The ſecond Point is, that the Free-holders, or Counties do not, nor cannot give Privilege to the Commons in Parliament. They that are under the Law cannot protect againſt it, they have no ſuch Privilege themſelves as to be free from Arreſts, and Actions: for if they had, then it had been no Privilege, but it would be the Common Law: And what they have not, they cannot give; *Nemo dat quod non habet*, neither do the Free-holders pretend to give any ſuch Privilege, either at their Election, or by any ſubſequent Act; there is no mention of any ſuch thing in the return of the Writ; nor in the Indentures between the Sheriff, and the Free-holders.

The third Point remains, That Privilege of Parliament is granted by the *King*. It is a known Rule, *that which gives the Form, gives the Conſequences of the Form*; the *King* by

by his Writ gives the very Eſſence, and Form to the Parliament: therefore Privileges which are but Conſequences of the Form, muſt neceſſarily flow from Kings.

All other Privileges and Protections are the Acts of the King; and by the Kings Writ. Sir *Edw. Coke* ſaith, that the *Protection of mens Perſons, Servants, and Goods, is done by a Writ of Grace from the King.* At the preſentment of the Speaker of the Houſe of Commons to the King upon the firſt day of Parliament, The Speaker in the Name and Behoof of the Commons, humbly craveth that his Majeſty would be graciouſly pleaſed to grant them their accuſtomed Liberties and Privileges; which Petition of theirs, is a fair Recognition of the Primitive Grace and Favour of Kings in beſtowing of Privilege, and it is a ſhrewd Argument againſt any other Title: For our Anceſtors were not ſo ceremonious nor ſo full of Complement as to beg that by *Grace*, which they might claim by *Right.* And the Renewing of this Petition every Parliament argues the Grant to be but temporary, during only the preſent Parliament; and that they have been accuſtomed, when they have been accuſtomably ſued, or petitioned for. I will cloſe this Point with the Judgment of King *James*, who in his Declaration

ration touching his Proceedings in Parliament 1621. reſolves, *that moſt Privileges of Parliament grew from Precedents which rather ſhew a Toleration than an Inheritance; therefore he could not allow of the Style, calling it their ancient and undoubted Right and Inheritance, but could rather have wiſhed that they had ſaid, their Privileges were derived from the Grace and Permiſſion of his Anceſtors and Him:* and thereupon he concludes, *He cannot with Patience endure his Subjects to uſe ſuch Antimonarchicall words concerning their Liberties, except they had ſubjoyned, that they were granted unto them by the Grace and Favours of his Predeceſſors:* yet he promiſeth *to be careful of whatſoever Privileges they enjoy by long Cuſtom and uncontrolled and lawful Precedents.*

Obſer-

# OBSERVATIONS
UPON
## Ariſtotle's Politiques,
TOUCHING
## Forms of Government.
Together with
# DIRECTIONS
FOR
## Obedience to Governours
in Dangerous and Doubtful Times.

# THE PREFACE.

*IN every Alteration of Government there is ſomething new, which none can either Divine, or Judge of, till time hath tried it: we read of many ſeveral wayes of Government; but they have all, or moſt of them, been of particular Cities, with none, or very ſmall Territories at firſt belonging to them. At this preſent the Government of the* Low-Countries, *and of* Swiſſerland, *are not appropriated either of them to any one City, for they are compounded of ſeveral petty Principalities, which have ſpecial and different Laws and Privileges each of them; inſomuch that the United Provinces, and united Cantons are but Confederacies and Leaguers, and not two entire Commonweals; Aſſociates onely for mutual Defence. Nay, the Cantons of* Swiſſerland *are not only ſeveral Republicks, but reputed to have different Forms of Commonweals; ſome being ſaid to be Ariſtocratically governed, and*

*others*

*others Democratically, as the Mountaineers: and ſome of the Cantons are Papiſts, and ſome Proteſtants, and ſome mixt of both: we do not find that any large or great Dominion or Kingdom united in one Government, and under the ſame Laws, was ever reduced at once to any kind of Popular Government, and not confined to the ſubjection of one City: This being a thing not yet done, requires the abler men to ſettle ſuch a Peaceable Government as is to be deſired: there being no Precedent in the caſe; all that can be done in it, is, at firſt to enquire into ſuch other Governments, as have been exiſtent in the World. As a Preface to ſuch an Enquiry, the Sacred Scripture (if it be but for the Antiquity of it) would be conſulted; and then* Ariſtotle, *the grand Maſter of Politiques; and after him the* Greek *and* Latin *Hiſtorians that lived in Popular times, would be diligently examined. To excite others of greater Abilities to an exacter Diſquiſition, I preſume to offer a Taſte of ſome Doctrines of* Ariſtotle, *which are uſher'd in with a briefer Touch of the Holy Scriptures.*

*It is not probable, that any ſure direction of the beginning of Government, can be found either in* Plato, Ariſtotle, Cicero, Polybius, *or in any other of the Heathen Authors, who were ignorant of the manner of the Creation of the World: we muſt not neglect the Scriptures, and*

*ſearch*

*ſearch in Philoſophers for the grounds of Dominion and Property, which are the main Principles of Government and Juſtice. The firſt Government in the World was Monarchical, in the Father of all Fleſh.* Adam *being commanded to multiply, and People the Earth, and to ſubdue it, and having Dominion given him over all Creatures, was thereby the Monarch of the whole World; none of his Poſterity had any Right to poſſeſs any thing, but by his Grant or Permiſſion, or by Succeſſion from him:* the Earth (*ſaith the* Pſalmiſt) hath he given to the Children of men: *which ſhews, the Title comes from Fatherhood. There never was any ſuch thing as an Independent Multitude, who at firſt had a natural Right to a Community: this is but a Fiction, or Fancy of too many in theſe dayes, who pleaſe themſelves in running after the Opinions of* Philoſophers *and* Poets, *to find out ſuch an Original of Government, as might promiſe them ſome title to Liberty, to the great Scandal of Chriſtianity, and bringing in of Atheiſm, ſince a natural freedom of mankind cannot be ſuppoſed without the denial of the Creation of* Adam. *And yet this conceit of Original Freedom is the only Ground upon which not only the Heathen Philoſophers, but alſo the Authors of the Principles of the Civil Law; and* Grotius, Selden, Hobs, Aſhcam, *and others raiſe, and build their Do-*

*ctrines*

*Grines of Government, and of the ſeveral ſorts or kinds, as they call them, of Common-wealths.*

Adam *was the Father, King, and Lord over his Family: a Son, a Subject, and a Servant or a Slave, were one and the ſame thing at firſt; the Father had power to diſpoſe, or ſell his Children or Servants, whence we find, that at the firſt reckoning up of Goods in Scripture, the Man-ſervant, and the Maid-ſervant are numbred among the Poſſeſſions and Subſtance of the Owner, as other Goods were. As for the names of Subject, Slave, and Tyrant, they are not found in Scripture, but what we now call a Subject or a Slave, is there named no other than a Servant: I cannot learn that either the* Hebrew, Greek *or* Latin *have any proper and Original Word for a Tyrant or a Slave, it ſeems theſe are names of later invention, and taken up in diſgrace of Monarchical Government.*

*I cannot find any one place, or Text in the Bible, where any Power or Commiſſion is given to a People either to govern themſelves, or to chooſe themſelves Governours, or to alter the manner of Government at their pleaſure; the Power of Government is ſettled and fixed by the Commandement of* Honour thy Father; *if there were a higher Power than the Fatherly, then this Commandement could not ſtand,*

*ſtand, and be obſerved: Whereas we read in Scripture, of ſome Actions of the People in ſetting up of Kings, further than to a naked Declaration by a part of the People of their Obedience, ſuch Actions could not amount, ſince we find no Commiſſion they have, to beſtow any Right; a true repreſentation of the People to be made, is as impoſſible, as for the whole People to Govern; the names of an* Ariſtocracy, *a* Democracy, *a* Commonweal, *a* State, *or any other of like ſignification, are not to be met either in the Law or Goſpel.*

*That there is a ground in Nature for Monarchy,* Ariſtotle himſelf *affirmeth, ſaying, the* firſt Kings were Fathers of Families; *as for any ground of any other Form of Government, there hath been none yet alleged, but a ſuppoſed natural Freedom of Mankind; the Proof whereof I find none do undertake, but only beg it to be granted: We find the Government of Gods own People varied under the ſeveral Titles of Patriarchs, Captains, Judges, and Kings; but in all theſe the Supreme Power reſted ſtill in one Perſon onely: We no where find any Supreme Power given to the People, or to a Multitude in Scripture, or ever exercifed by them. The People were never* the Lords anointed, *nor called* Gods, *nor Crowned, nor had the Title of* Nurſing-Fathers, Gen. 35.11. *The Supreme Power being an indiviſible Beam*

*of*

*of Majeſty, cannot be divided among, or ſettled upon a Multitude. God would have it fixed in one Perſon, not ſometimes in one part of the People, and ſometimes in another; and ſometimes, and that for the moſt part, no where, as when the Aſſembly is diſſolved, it muſt reſt in the Air, or in the walls of the Chamber where they were Aſſembled.*

*If there were any thing like a Popular Government among Gods People, it was about the time of the* Judges, *when there was* no King in Iſrael; *for they had then ſome ſmall* Show *of Government, ſuch as it was, but it was ſo poor and beggarly, that the Scripture brands it with this note, that* every man did what was right in his own eyes, becauſe there was no King in Iſrael; *it is not ſaid, becauſe there was no Government, but becauſe there was no* King; *it ſeems no* Government, *but the Government of a King, in the judgment of the Scriptures could reſtrain men from doing what they liſted; where every man doth what he pleaſeth, it may be truly ſaid, there is no Government; for the end of Government is, that every man ſhould not do what he pleaſed, or be his own Judge in his own caſe; for the Scripture to ſay there was no King, is to ſay there was no Form of Government in* Iſrael.

*And what the Old Teſtament teacheth us, we have confirmed in the New: If Saint* Paul *had*

*had onely ſaid,* Let every Soul be ſubject to the higher Powers, *and ſaid no more: then men might have diſputed, whether Saint* Paul, *by* higher Powers, *had not meant as well other Governours as Kings; or other Forms of Government, as Monarchy; but the good luck is,* Saint Paul *hath been his own Interpreter or Comment: for, after the general Doctrine of Obedience to be given by all men to the* higher Powers, *he proceeds next to charge it home, and lay it to the Conſcience under pain of Damnation, and applies it to each particular mans Conſcience; ſaying,* Wilt thou not be afraid of the Power? *which Power he expounds in the ſingular number, reſtraining it to one Perſon, ſaying,* He is the Miniſter of God to thee; *it is not,* They are the Miniſters to thee; *and then again,* He beareth not the Sword in vain; *and then a third time in the ſame verſe, leſt thou ſhould'ſt forget it, he ſaith,* for He is the Miniſter of God, a Revenger to Wrath &c. upon thee: *if* Saint Paul *had ſaid,* They are the Miniſters of God, *or* They bear not the Sword in vain, *it might be doubted, whether* [*they*] *were meant of Kings onely, or of other Governours alſo; but this Scruple is taken away by the Apoſtle himſelf. And as* St. Paul *hath expounded what he means by* Higher Powers, *ſo* St. Peter *alſo doth the like: for the ſelf-ſame Word that* St. Paul *uſeth*

*for* Higher, *in Saint* Peter *is tranſlated* Supreme; *ſo that though in our* Engliſh *Bibles the words differ, yet in the Original they are both the ſame; ſo that St.* Paul *might have been Engliſhed,* Let every Soul be ſubject to the Supreme Power; *or St.* Peter *might have been tranſlated,* whether to the King as to the higher; *yet there is this difference, that whereas St.* Paul *uſeth the word in the Plural number, St.* Peter *hath it in the Singular, and with application to the King.*

*It will be ſaid, Though St.* Peter *make the King Supreme, yet he tells us the King is a* humane Ordinance, *or a Creature of the People's. But it is anſwered, Kings may be called an humane Ordinance, for being made of one of the People, and not by the People; and ſo are humane in Regard of their* material *Cauſe, not of their* efficient. *If St.* Peter *had meant that Kings had been made by the* People, *he muſt alſo have meant that Governours had been made by the People, for he calls the Governours as well an Ordinance of Man, as the King; for his words are,* Submit your ſelves to every Ordinance of man for the Lord's ſake, whether it be to the King as Supreme, or whether it be to Governours: but *Saint* Peter *ſheweth, that Governours are not made by the People; for he ſaith,* they that are ſent by Him ( *not by them* ) for the puniſhment

of

of Evil doers: *ſo that the Governours are ſent by the King, and not by the People: ſome would have* ſent by him, *to be* ſent by God; *but the Relative muſt be referr'd to the next Antecedent, which is the King, and not God. Beſides, if Governours be ſent by God, and Kings by the People, then Governours would be Supreme, which is contrary to Saint* Peter's *Doctrine; and it will follow, that the People have not the power of chooſing Repreſenters to Govern, if Governours muſt be ſent of God.*

*The ſafeſt ſenſe of Saint* Peter's *words is,* Submit your ſelves to all Humane Laws, whether made by the King, or by his Subordinate Governours. *So the King may be called a Humane Ordinance, as being all one with a* Speaking Law: *the word in the Original is,* Be ſubject to every humane Creation; *it is more proper to call a Law made by a King a creation of an Ordinance, than the Peoples chooſing or declaring of a King, a Creation of him.*

*But take the words in what ſenſe ſoever you will, it is moſt evident, that Saint* Peter *in this place, takes no notice of any Government or Governours, but of a King, and Governours ſent by him, but not by the People. And it is to be noted, That St.* Peter *and St.* Paul, *the two chief of the Apoſtles, wrote their Epi-*

*ſtles at ſuch a time, when the name of a Popular* Government, *or of the People of* Rome *was at leaſt ſo much in Shew and in Name, that many do believe, That notwithſtanding the Emperours by ſtrong hand uſurped a Military Power; yet the* Government *was for a long time in moſt things then in the Senate and People of* Rome; *but for all this, neither of the two Apoſtles take any notice of any ſuch Popular* Government; *No, nor our Saviour himſelf, who divides all between* God *and* Cæſar, *and allows nothing that we can find for the People.*

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OBSERVA-

# OBSERVATIONS UPON Ariſtotles Politiques, TOUCHING Forms of Government.

WHAT cannot be found in *Scripture*, many do look for in *Ariſtotle*; for if there be any other Form of Government beſides Monarchy, he is the man beſt able to tell what it is, and to let us know by what name to call it, ſince the Greek Tongue is moſt happy in compounding Names, moſt ſignificant to expreſs the nature of moſt things: The uſual terms in this Age of *Ariſtocraty* and *Democraty* are taken up from him to expreſs Forms of Government moſt different from *Monarchy*: We muſt therefore make inquiry into *Ariſtotle* touching theſe two Terms.

True it is, *Ariſtotle* ſeems to make three ſorts of Government, which he diſtinguiſheth by * *the Sovereignty of one man, or of a few, or of many, for the common Good.*

* Ἀνάγκη δ' ἢ εἷς κύριον ἢ ἕνα, ἢ ὀλίγους, ἢ τοὺς πολλοὺς πρὸς τὸ κοινὸν συμφέρον. l. 3. c. 7.

Ταύτας μὲν ὀρθὰς εἶναι πολιτείας· τὰς πρὸς τὸ ἴδιον, ἢ τοῦ ἑνὸς, ἢ τῶν ὀλίγων, ἢ τοῦ πλήθους παρεκβάσεις. Τῶν μὲν ἀρχῶν τὴν πρὸς τὸ κοινὸν ἀποβλέπουσαν συμφέρον, βασιλείαν. &c.

*These* (he saith) *are right or perfect Governments, but those that are for the private Good of one, or of a few, or of a Multitude, are Transgressions.* The Government of a *Monarchy for the Common Good, he calls a Kingdom.* The Government *of a few more than one, an Aristocratie; either because the best men govern, or because it is for the best of the governed: when a Multitude governs for the common Good, it is called by the common name of all Governments, a* POLITIE. *It is possible that one or a few may excell in Vertue, but it is difficult for many to excell in all Vertue, except in Warlike Affairs, for this is natural in a Multitude; therefore, in this sort of Government their principal Use is to war one for another, and to possess the Arms or Ammunition. The Transgressions of Government before spoken of, are these: Tyranny is the Transgression of the Kingdom; and Democratie is the Transgression of the Politie. For Tyranny is a Monarchy for the Benefit of the Monarch, the Oligarchy, for the Profit of the Rich; the Democratie for the Benefit of the Poor. None of these are for the Common Good.*

Here *Aristotle*, if he had stood to his own Principles, should have said *an Oligarchy should be for the Benefit of a few, and those the best; and not for the Benefit of the rich: and a Democratie for the Benefit of many, and not of the Poor only*; for so the Oppolition lyeth; but then *Aristotle* saw his *Democratie* would prove to be no Transgression, but a perfect *Politie*, and his

his *Oligarchy* would not be for the Benefit of a few, and thoſe the beſt men; for they cannot be the beſt men, that ſeek onely their private Profit. In this Chapter, the mind of *Ariſtotle* about the ſeveral kinds of Government, is clearlieſt delivered, as being the foundation of all his Books of Politiques, it is the more neceſſary to make a curious Obſervation of theſe his Doctrines. In the firſt place, he acknowledgeth the Government of *one man*, or of a *Monarchy*, and that is a perfect Form of Government.

Concerning Monarchy, *Ariſtotle* teacheth us the beginning of it; for, ſaith he, the * *firſt Society made of many Houſes is a Colony, which ſeems moſt naturally to be a Colony of Families, or Foſter-bretheren of Children and Childrens children. And therefore at the beginning Cities were, and now Nations, under the Government of Kings; the Eldeſt in every houſe is King, and ſo for Kindred ſake it is in Colonies.*

* Μάλιστα ὃ κατὰ φύσιν ἔοικεν ἡ κώμη ἀποικία οἰκείας εἶναι, ἃς καλοῦσί τινες ὁμογάλακτας παῖδάς τε καὶ παίδων παῖδας. Διὸ καὶ τὸ πρῶτον ἐβασιλεύοντο αἱ πόλεις, καὶ νῦν ἔτι τὰ ἔθνη. l. 1. c. 2. πᾶσα γὰρ οἰκεία βασιλεύεται ὑπὸ τοῦ πρεσβυτάτου, ὥστε καὶ αἱ ἀποικίαι διὰ τὸ συγγένειαν.

Thus he deduced the Original of Government from the Power of the Fatherhood, not from the Election of the People. This it ſeems he learnt of his Maſter *Plato*, who in his third Book of Laws affirms, that *the true and firſt Reaſon of Authority is, that the Father and Mother, and ſimply thoſe that beget and ingender, do command and rule over all their Children.* *Ariſtotle* alſo tells us from *Homer*,

(a) Θεμιζόυει ὃ ἕκαστος παίδων καὶ ἀλόχων.

(a) that *every man gives Laws to his Wife and Children.*

In the fourth Book of his Politiques, *cap.* 2. he gives to Monarchy the Title of the (b) *first and divineſt ſort of Government, defining Tyranny to be a Tranſgreſſion from the firſt, and divineſt.*

(b) Ἀνάγκη γὰρ τὴν μὲν τῆς πρώτης καὶ θειοτάτης παρέκβασιν εἶναι χειρίστην.

Again, *Ariſtotle* in the eighth Book of his *Ethicks*, in the 12 Chapter, ſaith, That of (c) *the right Kinds of Government, a Monarchy was the beſt, and a popular Eſtate the worſt.*

(c) Τούτων δὲ βελτίστη μὲν ἡ βασιλεία, χειρίστη δὲ τιμοκρατία.

Laſtly, in the third Book of his *Politiques*, and the ſixteenth Chapter concerning Monarchy, he ſaith, that (d) *A perfect Kingdom is that wherein the King rules all things according to his own Will; for he that is called a King according to the Law makes no kind of Government.*

(d) Περὶ δὲ τὴν παμβασιλείας καλουμένης, αὕτη δ' ἐστὶν καθ' ἣν ἂν ἄρχει πάντων κατὰ τὸν ἑαυτοῦ βούλησιν ὁ βασιλεύς· ὁ μὲν γὰρ κατὰ νόμον λεγόμενος βασιλεὺς, οὐκ ἔστιν εἶδος, καθάπερ εἴπομεν πολιτείας.

Secondly, he ſaith there is a Government of a *few men*, but doth not tell us how many thoſe few men may, or muſt be; only he ſaith they muſt be more than one man, but how many, that he leaves uncertain.

This perfect Government of a few, any man would think *Ariſtotle* ſhould have called an *Oligarchy*, for

for that this word properly ſignifies ſo much; but in ſtead of the Government of a few, *Ariſtotle* gives it a quite other name, and terms it an *Ariſtocraty*, which ſignifies the Power of the beſt; the reaſon why it is called an *Ariſtocraty*, ſaith *Ariſtotle*, is for that there the beſt *men govern*, or (becauſe that is not always true) *for that it is for the beſt of the governed*; by this latter reaſon any Government, and moſt eſpecially a *Monarchy*, may be called an *Ariſtocraty*, becauſe the End of *Monarchy* is for the beſt of the governed, as well as the End of an *Ariſtocraty*; ſo that of theſe two Reaſons for calling the Government of a few an *Ariſtocratie*, the firſt is ſeldome true; and the latter is never ſufficient to frame a diſtinction. This *Ariſtotle* himſelf confeſſeth in his next Chapter, ſaying (*a*) that *the Cauſes aforeſaid do not make a Difference, and that it is Poverty and Riches, and not Few, and Many, that makes the Difference between an Oligarchy, and Democraty; there muſt be an Oligarchy where rich men rule, whether they be few or many: and whereſoever the Poor have the Sovereignty, there muſt be a Democraty.*

(*a*) Διὸ καὶ ὃ συμβαίνει τὰς ῥηθείσας αἰτίας γίνεσθαι διαφορᾶς, ᾧ ὃ διαφέρουσιν ἥτε δημοκρατία καὶ ἡ ὀλιγαρχία ἀλλήλων πενία καὶ πλοῦτός ἐστι, &c. *lib.* 3. *c.* 8.

Now if *Ariſtotle* will allow Riches and Poverty to make a Difference between an *Oligarchy* and a *Democratp*: theſe two muſt likewiſe make the Difference between an *Ariſtocraty* and *a Polity*: for the only Difference *Ariſtotle* makes between them is, in their *Ends*, and not in their *Matter*; for the ſame few men may make an *Ariſtocraty*, if their End be the Common Good; and they may be an *Oligarchy*

*chy*, if they aim only at their private Benefit.

Thus is *Ariſtotle* diſtracted and perplexed how to diſtinguiſh his *Ariſtocratie*, whether by the *ſmallneſs of their Number*, or by the *Greatneſs of their Eſtates*. *Lib.* 1. *c.* 8. Nay if we look into *Ariſtotles Rhetoriques*, we ſhall find a new Conceit, not only about *Ariſtocratie*, but alſo about the ſorts of Government: for whereas he has taught us in his *Politiques*, that there be three ſorts of right or perfect Government, and as many ſorts of wrong, which he calls Tranſgreſſions or Corruptions, he comes in his *Rhetoriques*, and teacheth us that there be four ſorts of Government.

(*a*) ἔστι ἡ δημοκρατία πολιτεία ἐν ᾗ κλήρῳ διανέμονται τὰς ἀρχάς· ὀλιγαρχία ἡ ἐν ᾗ οἱ ἀπὸ τιμημάτων· ἀριστοκρατία ἡ ἐν ᾗ οἱ κατὰ παιδείαν.

1 (*a*) *A Democratie, where Magiſtracies are diſtributed by Lots.*

2. *In an Oligarchy by their Wealth.*

3. *In an Ariſtocratie by their Inſtructions in the Law. It is neceſſary for theſe to appear the beſt from whence they have their name.*

(*b*) Μοναρχία δέ ἐστι κατὰ τὸ ὄνομα ἐν ᾗ εἷς ἁπάντων κύριός ἐστι.

4. (*b*) *A Monarchy according to the name, wherein one is Lord over all.*

Here we ſee *Ariſtocratie* is not diſtinguiſhed by ſmallneſs of Number, nor by Riches, but by Skill in the Laws; for he ſaith *thoſe that are inſtructed in the Laws govern in an Ariſtocratie*: οἱ γὰρ ἐμμεμενηκότες ἐν τοῖς νομίμοις· ἐν τῇ Ἀριστοκρατίᾳ ἄρχωσιν. a Point not dreamt of in his *Politiques*; by which it ſeems *Ariſtotle* himſelf did not know well what he would have to

to be an *Ariſtocratie*. And as he cannot teach us truly what an *Ariſtocratie* is, ſo he is to ſeek to tells us where any *Ariſtocratie* ever was; even himſelf ſeems to doubt, whether there be any ſuch Form of Government, where he ſaith in his third Book of Politiques, *cap.* 5.

(a) *It is impoſſible for any Mechanical man to be a Citizen in an Ariſtocratie, if there be any ſuch Government as they call Ariſtocratical.*

(a) Εἴ τις ἐστὶν ἣν καλοῦσιν ἀριστοκρατικήν.

His [*if*] makes him ſeem to doubt of it; yet I find him affirm that the Commonwealth of *Carthage* was *Ariſtocratical*; he doth not ſay it was an *Ariſtocratie*, for he confeſſeth it had many of the Tranſgreſſions which other Commonwealths had, and did incline either to a *Democratie* or an *Oligarchy*.

*(b) The Government of Carthage did tranſgreſs from an Ariſtocratie to an Oligarchy.*

(b) Παρεκβαίνει ὅ τῆς ἀριστοκρατίας ἡ τάξις τῶν Καρχηδονίων μᾶλιστα πρὸς τὴν ὀλιγαρχίαν. *L.* 2. *c.* 11.

And he concludes, that if by Misfortune there ſhould happen any Diſcord among the *Carthaginians* themſelves, there would be no Medicine by Law found out to give it Reſt; wherein me-thinks *Ariſtotle* was a kind of Prophet, for the Diſcords between the Citizens of *Carthage*, were the main Cauſe that *Hannibal* loſt not only *Italy*, but *Carthage* it ſelf.

By theſe few Collections we may find how uncertain *Ariſtotle* is in determining what an *Ariſtocratie* is, or where or when any ſuch Government was; it may juſtly be doubted whether there

there ever was, or can be any ſuch Government.

Let us paſs from his *Ariſtocraty*, to his third ſort of perfect or right Government; for which he finds no particular Name, but only the common Name of all Government, *Politia*: It ſeems the *Greeks* were wonderfully to ſeek, that they of all men ſhould not be able to compound a name for ſuch a perfect Form of Government; unleſs we ſhould believe that they eſteemed this kind of Commonwealth ſo ſuperlatively excellent, as to be called, καθ' ἐξοχὴν, the *Government of all Governments*, or *Polity* of *Polities*.

But howſoever *Ariſtotle* in his Books of *Politiques* vouchſafe us not a Name, yet in his Books of *Ethiques* he affirmeth it may very properly be called

(a) Τρίτη δ' ἡ ἀπὸ τιμημάτων, ἣν τιμοκρατικὴν λέγειν οἰκεῖον φαίνεται. L. 8. c. 12.

(a) *a timocratical Government, where Magiſtrates are choſen by their Wealth*: But why *Ariſtotle* ſhould give it ſuch a Name I can find no Reaſon; for a *Polity* by his Doctrine is the Government of many, or of a Multitude, and the Multitude he will have to be the poorer ſort, inſomuch that except they be poor, he will not allow it to be the Government of a Multitude, though they be never ſo many; for he makes Poverty the trueſt Note of a popular Eſtate; and as if to be Poor and to be Free were all one, he makes Liberty likewiſe to be a Mark of a popular Eſtate; for in his 4*th* Book, and 4*th* Chapter, he reſolves, That (b) *a popular State is where free men governe, and an Oligarchy where rich men rule*; as if rich men could not be free men: Now how Magiſtrates ſhould be cho-

(b) Ὅτι δῆμός ἐστιν ὅταν ἐλεύθεροι κύριοι ὦσιν, ὀλιγαρχία δ' ὅταν οἱ πλέσιοι.

choſen for their Wealth, ἀπὸ τιμημάτων, among all poor men is to me a Riddle.

Here I cannot but wonder why all our *modern Politicians*, who pretend themſelves *Ariſtotelians*, ſhould forſake their great Maſter, and account a *Democraty* a right or perfect Form of Government, when *Ariſtotle* brands it for a Tranſgreſſion, or a depraved, or corrupted manner of Government. They had done better to have followed *Ariſtotle*, who (though other *Grecians* could not, yet he) could find out the name of a *Timocraty* for a right popular Government: But, it may be, our *Politicians* forbear to uſe the word *Timocraty*, becauſe he affords an ill Character of it, ſaying, That of all the right Kinds of Government a *Monarchy was the beſt, and a Timocraty the worſt*; βελτίστη ἡ βασιλεία, χειρίστη ἡ τιμοκρατία. Yet afterwards *Ariſtotle* in the ſame Chapter makes amends for it, in ſaying, a *Democraty is the leaſt vicious, becauſe it doth but a little Tranſgreſs from a Timocraty.*

But not to inſiſt longer on the name of this nameleſs Form of Government, let Inquiry be made into the thing it ſelf, that we may know what *Ariſtotle* ſaith is the *Government of many, or of a Multitude, for the Common Good.*

This *Many*, or *Multitude* is not the whole People, nor the major part of the People, or any choſen by the People to be their Repreſentors. No, *Ariſtotle* never ſaith, or meaneth any ſuch thing; for he tells us (*a*) *the beſt City doth not make any Artificer, or Handicraftſman a Citizen.*

(*a*) Ἡ γὰρ βελτίστη πόλις οὐ ποιήσει βάναυσον πολίτην. L. 3 1. 5.

And if theſe be excluded out of the Number of Citizens, there will be but a few left in every City

to

to make his *Timocratical* Government, since Artificers or Mercenary men make far the greatest part of a City; or to say (*a*) *a City is a Community of free men*, and yet to exclude the greatest part of the Inhabitants from being Citizens, is but a Mockery of Freedom; for any man would think that a City being a Society of men assembled to the End to live well, that such men without whom a City cannot subsist, and who perform necessary Works, and minister to all in Publick, should not be barred from being Citizens, yet says *Aristotle*, (*b*) *all those are not to be deemed Citizens without whom a City cannot subsist*, except they abstain from necessary Works; for he resolves it (*c*) *impossible for him to exercise the Work of Vertue, that useth a mechanical or mercenary Trade.*

(*a*) Ἡ δὲ πόλις κοινωνία τῶν ἐλευθέρων ἐστί. *L.* 3. *c.* 7.

(*b*) Οὐ πάντας δετέον πολίτας ὧν ἄνευ ἐκ ἂν εἴη πόλις. *L.* 3. *c.* 5.

(*c*) Οὐ γὰρ οἷόν τ' ἐπιτελεῦσαι τὰ τῆς ἀρετῆς ζῶντα βίον βάναυσον ἢ ἀγοραῖον.

And he makes it one of his Conclusions, That (*d*) *in ancient times among some men, no publick Workman did partake of the Government, untill the worst of Democraties were brought in.*

(*d*) Διὸ παρ' ἐνίοις ἐ μετεῖχον οἱ δημιουργοὶ τὸ παλαιὸν ἀρχῶν πρὶν δῆμον γενέσθαι τὸν ἔσχατον. *L.* 3. *c.* 4.

Again *Aristotle* will have his best popular Government consist of *Free men*, and accounts the poorer sort of People to be free men; how then will he exclude poor Artificers, who work for the Publick, from participating of the Government?

Fur-

Further it is obſervable in *Ariſtotle*, That, quite contrary to the Signification of the *Greek* names, the Government of a Multitude may be termed an *Oligarchy* if they be rich, and the Rule of a few a *Democratie* if they be poor and free.

After much Incertainty of the Nature of this Politique Government, which wants a name; *Ariſtotle* at laſt reſolves that this general Commonweal or *Politia* is compounded of a *Democratie and Oligarchy*; for, (*a*) *to ſpeak plainly, a Polity is a Mixture of a Democratie and an Oligarchy.*

(*a*) Ἔστι γὰρ ἡ πολιτεία, ὡς ἁπλῶς εἰπεῖν, μίξις ὀλιγαρχίας καὶ δημοκρατίας. *L.*4. *c.*8.

That is, one perfect Form is made of two imperfect ones; this is rather a confounding than compounding of Government, to patch it up of two corrupt ones, by appointing an *Oligarchical Penalty* for the rich Magiſtrates that are choſen *by Election*, and a *Democratical Fee* for the poor Magiſtrates that are choſen *by Lot*.

Laſtly it is to be noted, That *Ariſtotle* doth not offer to name any one City or Commonweal in the World, where ever there was any ſuch Government as he calls a *Politie*: for him to reckon it for a perfect Form of Government, and of ſuch Excellency as to carry the Name from all other, and yet never to have been extant in the World, may ſeem a Wonder; and a man may be excuſed for doubting, or for denying any ſuch Form to be poſſible in Nature, if it cannot be made manifeſt what it is, nor when, nor where it ever was.

In Concluſion, ſince *Ariſtotle* reckons but three kinds of perfect Government, which are, Firſt, *a Monar-*

*chy of one*; Secondly, an *Aristocraty of a few*; Thirdly, a *Polity of a Multitude*; and if these two latter cannot be made good by him: there will remain but one right Form of Government only, which is *Monarchy*: And it seems to me, that *Aristotle* in a manner doth confess as much, where he informs us (*a*) *that the first Commonweal among the Grecians, after Kingdoms, was made of those that waged War*: meaning that the *Grecians*, when they left to be governed by Kings, fell to be governed by an Army: their *Monarchy* was changed into a *Stratocraty*, and not into an *Aristocraty* or *Democraty*: for if Unity in Government, which is only found in *Monarchy*, be once broken, there is no Stay or Bound, untill it come to a constant standing Army; for *the People or Multitude*, as *Aristotle* teacheth us, *can excell in no Vertue* but *Military*, and that *That is natural to them*, and therefore in a popular Estate, (*b*) *The Sovereign Power is in the Sword, and those that are possessed of the Arms*. So that any Nation or Kingdom that is not charged with the keeping of a King, must perpetually be at the Charge of paying and keeping of an Army.

(*a*) καὶ ἡ πρώτη δὲ πολιτεία ἐν τοῖς Ἕλλησιν ἐγένετο, μετὰ τὰς βασίλειας ἐκ τῶν πολεμούντων. L. 4. c. 13.

(*b*) Πλείους δ' ἤδη χαλεπὸν ἀκριβῶσθαι πρὸς πᾶσαν ἀρετὴν, ἀλλὰ μάλιστα τὴν πολεμικήν· αὕτη γὰρ ἐν πλήθει γίγνεται· διόπερ κατὰ ταύτην τὴν πολιτείαν κυριώτατον τὸ προπολεμοῦν, καὶ μετέχουσιν αὐτῆς οἱ κεκτημένοι τὰ ὅπλα. L. 3. c. 7.

These

Theſe brief Obſervations upon *Ariſtotle's* perfect Forms of Government, may direct what to judge of thoſe corrupted or imperfect Forms which he mentions; for *rectum eſt index ſui & obliqui*, and he reckons them to be all one in Matter and Form, and to differ only in their End: the end of the Perfect Forms being for the Good of the *Governed*; and of the Imperfect, for the benefit only of the *Governours*. Now ſince *Ariſtotle* could not tell how to define or deſcribe his Right or Perfect Forms of Government, it cannot be expected he can ſatisfie us concerning thoſe he calls Imperfect: yet he labours and beſtirrs himſelf mainly in the buſineſs, though to little purpoſe; for howſoever the Title of his Book be Πολιτικῶν, of *Politiques*, and that he mentions πολιτεία for a ſpecial Form of Government, which hath the common name of a *Policy*: yet when he comes to diſpute in particular of Government, he argues only about *Democracies* and *Oligarchies*, and therein he is copious, becauſe only thoſe which he calls corrupt Forms of Governments were common in *Greece* in his dayes. As for an *Ariſtocracy*, or a *Policy* which he mentions, they are only Speculative Notions, or Airy Names, invented to delude the World, and to perſwade the People, that under thoſe quaint Terms, there might be found ſome ſubtile Government, which might at leaſt equal, if not excell *Monarchy*: And the Inventers of thoſe fine Names were all but Rebels to *Monarchy*, by *Ariſtotles* confeſſion, where he ſaith, *the firſt Commonweals of* Greece *after Kings were left, were made of thoſe that waged War.* l. 4. c. 13.

As *Ariſtotle* is irreſolute to determine what are truly Perfect *Ariſtocracies* and *Policies*, ſo he is to

ſeek in deſcribing his imperfect Forms of Government, as well *Oligarchies* as *Democracies*, and therefore he is driven to invent ſeveral ſorts of them, and to confound himſelf with Subdiviſions: we will alledge ſome of his words. *The cauſe why there be many kinds of Commonweals is, for that there are many parts of every City. Sometimes all theſe parts are in a Commonweal, ſometimes more of them, ſometimes fewer: whence it is manifeſt, that there are many Commonweals differing from each other in kind: becauſe the parts of them differ after the ſame manner. For a Commonweal is the Order of Magiſtrates diſtributed, either according to the Power of them that are partakers of it, or according to ſome other common equality belonging to Poor and Rich, or ſome other thing common to both. It is therefore neceſſary, that there be ſo many Commonweals as there are Orders, according to the excellencies and differences of Parts. But it ſeemeth principally there are but two chief kinds of Commonweals; the* Democracy *and the* Oligarchy: *for they make the* Ariſtocracy *a branch of* Oligarchy, *as if it were a kind of* Oligarchy; *and that other which is properly a* Policy, *to be a branch of* Democracy. *So they are wont to eſteem of Commonweales; but it is both truer and better; that there being two right Forms, or one, that all the other be tranſgreſſions.* Here we find *Ariſtotle* of ſeveral minds, ſometimes he is for many Commonweales, ſometimes for two, or ſometimes for one. As for his many Commonweals, if he allow them according to the ſeveral parts of a City, he may as well make three thouſand kinds of Commonweals, as three: if two Artificers and three Souldiers ſhould govern, that ſhould be one kind of Commonweal: if four Husband-

bandmen, and five Merchants, that would be a ſecond ſort; or ſix Taylors, and ten Carpenters, a third ſort, or a dozen Saylors, and a dozen Porters, a fourth; and ſo in *infinitum*, for *Ariſtotle* is not reſolved how many parts to make of a City, or how many Combinations of thoſe Parts; and therefore in his Reckoning of them, he differs from himſelf, ſometimes makes more, ſometimes fewer Parts: and oft concluding at the end of his Accompt with *et cætera's*: and confeſſing that one and the ſame man may act ſeveral Parts; as he that is a Souldier, may be a a Husbandman & an Artificer: and in his fourth Book and fourth Chapter, he ſeems to reckon up eight parts of a City, but in the Tale of them, he miſſes or forgets the ſixth. 1. He names the *Plowman*. 2. The *Artificer*. 3. The *Tradeſman*, or *Merchant*. 4. The *mercenary Hireling*. 5. The *Souldier*, (here *Ariſtotle* falls foul upon *Plato*, for making but four parts of a City. 1. *The Weaver*. 2. *The Plowman*. 3. *The Taylor*. 4. *the Carpenter*. Afterwards, as if theſe were not ſufficient, he addeth the *Smith*, and the *Freeder of neceſſary Cattle*, the *Merchant*, and the *ingroſſer* or *Retayler*) whileſt *Ariſtotle* was buſie in this Reprehenſion of *Plato*, he forgets himſelf, and skips over his ſixth part of a City, and names the 7. *rich men*, 8. *the Magiſtrates*. In the ſame Chapter, he offers at another Diviſion of the Parts of a City or Commonweal, firſt dividing it into a *Populacy*, *and Nobility*. The People he divides firſt into *Husbandmen*. 2. *Into Artificers*. 3. *Into Merchants, or thoſe that uſe Buying or Selling*. 4. *Into thoſe that frequent the Seas*, of whom *ſome follow the War, others ſeek for Gain*, ſome are *Carriers or Tranſporters*, others *Fiſhermen*. 5. *Handicraftſmen that poſſeſs ſo little goods, that they*

*cannot be idle.* 6. *Thoſe that are not free on both ſides, and any other ſuch like Multitude of People.* The kinds of Noblemen are diſtinguiſhed *by Riches, by Lineage, by Vertue, by Learning, and other ſuch like things.*

That there may be more Parts of a Commonweal than are here numbred, *Ariſtotle* confeſſeth or ſuppoſeth; and of a Multitude of Parts, and of a Multitude of Mixtures of ſuch Parts may be made a World of Forms of *Oligarchies* and *Democraties.*

This Confuſion of the Parts and Kinds of Commonweals drove *Ariſtotle* rather to reſt upon the Diviſion of *Rich* and *Poor*, for the main parts of a Commonweal, than any other. The diſtinction of a *Few* and of a *Multitude*, or the whole People, might ſeem more proper to diſtinguiſh between an *Oligarchy* and a *Democraty*; but the Truth is, *Ariſtotle* looking upon the Cities of *Greece*, and finding that in every of them, even in *Athens* it ſelf, there were many of the People that were not allowed to be Citizens, and to participate in the Government, and that many times He was a Citizen in one ſort of Government, who was not a Citizen in another, and that Citizens differed according to every Commonweal; he conſidered that if he ſhould place a Right in the whole People, either to govern, or to chuſe their Form of Government, or the Parties that ſhould govern: he ſhould hereby condemn the Government of all the Cities in *Greece*, and eſpecially of *Ariſtocraty*, which, as he ſaith, *allows no Artificer to be a Citizen*; and beſides, he ſhould thereby confute a main Principle of his own *Politiques*, which is, that *ſome men are born ſlaves by Nature*; which quite contradicts the Poſition, that *all men are born equal and free*; and therefore *Ariſtotle* thought it

it fitter to allow all imaginable Forms of Government, that ſo he might not diſparage any one City, than to propound ſuch a Form as might condemn and deſtroy all the reſt.

Though *Ariſtotle* allow ſo many ſeveral Forms of corrupted Governments; yet he inſiſts upon no one Form of all thoſe that he can define or deſcribe, in ſuch ſort, that he is able to ſay that any one City in all *Greece* was governed juſt according to ſuch a Form; his diligence is only to make as many Forms as the giddy or inconſtant Humour of a City could happen upon; he freely gives the People Liberty to invent as many Kinds of Government as they pleaſe, provided he may have Liberty to find Fault with every one of them; it proved an eaſier Work for him to find Fault with every Form, then to tell how to amend any one of them; he found ſo many Imperfections in all ſorts of Commonweals, that he could not hold from reproving them before ever he tells us what a Commonweal is, or how many ſorts there are; and to this Purpoſe he ſpends his whole ſecond Book in ſetting out, and correcting the chief Commonweals of *Greece*, and among others the *Lacedemonian*, *the Cretan*, and *Carthaginian* Commonweals; which three he eſteems to be much alike, and better than any other, yet he ſpares not to lay open their Imperfections, and doth the like to the *Athenian*; wherein he breaks the Rule of Method, by delivering the Faults of Commonweals, before he teach us what a Commonweal is; for in his firſt Book, he ſpeaks only of the Parts of which a City, or a Commonweal is made, but tells us not what a City or Commonweal is, untill he come to his third Book, and there in handling the

ſorts of Government, he obſerves no Method at all, but in a diſorderly way, flies backward and forward from one ſort to another: and howſoever there may be obſerved in him many Rules of *Policy* touching Government in general, yet without Doubt where he comes to diſcourſe of particular Forms, he is full of Contradiction, or Confuſion, or both: it is true, he is brief and difficult, the beſt Right a man can do him, is to confeſs he underſtands him not; yet a diligent Reader may readily diſcern ſo many Irregularities and Breaches in *Ariſtotle*'s Books of *Politiques*, as tend to ſuch Diſtraction or Confuſion, that none of our new Politicians can make Advantage of his Principles, for the Confirmation of *an original Power by Nature in the People*, which is the only Theme now in Faſhion: For *Ariſtotle*'s Diſcourſe is of ſuch Commonweals as were founded by particular Perſons, as the *Chalcedonian* by *Phaleas*, the *Mileſian* by *Hippodamas*, the *Lacedemonian by Lycurgus*, *the Cretan by Minos*, the *Athenian* by *Solon*, and the like: But the natural Right of the People to found, or elect their Kind of Government is not once diſputed by him: It ſeems the *underived Majeſty of the People*, was ſuch a metaphyſical piece of Speculation as our grand Philoſopher was not acquainted with; he ſpeaks very contemptuouſly of the Multitude in ſeveral Places, he affirms that the *People are baſe or wicked Judges in their own Caſes*,

*Lib.* 3. *c.* 9. οἱ πλεῖστοι φαῦλοι κρῖται περὶ τῶν οἰκείων· and that *many of them differ nothing from beaſt.*

*Lib.* 3. *c.* 11. τί διαφέρουσιν ἔνιοι τῶν θηρίων; and again he ſaith, *The Common People or Freemen are ſuch as are neither Rich, nor in Reputation for Vertue, and it is not ſafe to commit to them great Governments,*

*for,*

*for, by reaſon of their Injuſtice and Unskilfulneſs, they would do much Injuſtice, and commit many Errours; and it is pleaſanter to the multitude to live Diſorderly, than Soberly,* ἥδιον γὰρ τοῖς πολλοῖς τὸ ζῆν ἀτάκτως ἢ τὸ σωφρόνως. If *Ariſtotle* had believed a Publick Intereſt to have been in the People, to the enabling them to be their own carvers in point of Government, he would never have entangled himſelf with ſuch intricate and ambiguous Forms of Commonweals, as himſelf cannot tell how to explain, nor any of his Commentators how to underſtand, or make Uſe of. Lib. 6. c. 4.

This one Benefit I have found by Reading *Ariſtotle*, that his Books of *Politiques* ſerve for an admirable Commentary upon that Text of Scripture, which ſaith, *In thoſe dayes there was no King in Iſrael; every man did that which was right in his own eyes.* For he grants a liberty in every City, for any man, or multitude of men, either by Cunning, or Force, to ſet up what Government they pleaſe; and he will allow ſome name or other of a Commonweal, which in effect is to allow every man to do what he liſts, if he be able; hence it is, that by the confeſſion of *Ariſtotle*, *the firſt Commonweals in* Greece, *after Kings were given over, were made of thoſe that waged War*; thoſe ſeveral kinds of Commonweals, were all ſummed up into the government of an Army; for (*a*) *it is*, ſaith *Ariſtotle, in their power, who manage Arms to continue, or not continue the Form of Government, whereby the Eſtate is governed*, which is nothing elſe but a *Stratocratie*, or Military Government. We cannot much blame

Οἱ γὰρ τῶν ὅπλων κύριοι, καὶ μένειν καὶ μὴ μένειν κύριοι τὴν πολιτείαν. L. 7. c. 9.

*Ariſtotle* for the Incertainty, and Contrariety in him about the ſorts of Government, if we conſider him as a Heathen; for it is not poſſible for the Wit of man to ſearch out the firſt Grounds or Principles of Government, (which neceſſarily depend upon the original of Property) except he know that at the Creation one man alone was made, to whom the Dominion of all things was given, and from whom all men derive their Title. This Point can be learnt only from the Scriptures: as for the imaginary Contract of People, it is a Fancy not improbable only, but impoſſible, except a *multitude of men at firſt had ſprung out, and were engendred of the Earth, which Ariſtotle knows not whether he may believe, or no:* If Juſtice (which is to give every man his Due) be the End of Government, there muſt neceſſarily be a Rule to know how any man at firſt came to have a Right to any thing to have it truly called his. This is a Point *Ariſtotle* diſputes not; nor ſo much as ever dreamt of an original Contract among People: he looked no farther in every City, than to a Scambling among the Citizens, whereby every one ſnatcht what he could get: ſo that a violent Poſſeſſion was the firſt, and beſt Title that he knew.

*Lib. 2. c. 8.*

The main Diſtinction of *Ariſtotle* touching perfect or Right Forms of Government from thoſe that are imperfect or corrupt, conſiſts ſolely in this Point, that where the Profit of the governed is reſpected there is a right Government, but where the Profit of the Governours is regarded, there is a Corruption or Tranſgreſſion of Government. By this it is ſuppoſed by *Ariſtotle*, that *there may be a Government only for the Benefit of the Governours*; this

this Suppoſition to be falſe, may be proved from *Ariſtotle* himſelf; I will inſtance about the Point of *Tyranny*.

*Tyranny*, ſaith *Ariſtotle*, (*a*) *is a deſpotical or maſterly Monarchy*; now he confeſſeth, that (*b*) *in truth the maſterly Government is profitable both to the Servant by Nature, and the Maſter by Nature*, and he yields a ſolid reaſon for it, ſaying, (*c*) *It is not poſſible, if the Servant be deſtroyed, that the Maſterſhip can be ſaved*; whence it may be inferred, That if the Maſterly Government of *Tyrants* cannot be ſafe without the Preſervation of them whom they govern, it will follow that *a Tyrant cannot govern for his own Profit only*: and thus his main Definition of Tyranny fails, as being grounded upon an impoſſible Suppoſition by his own Confeſſion. No Example can be ſhewed of any ſuch Government that ever was in the World, as *Ariſtotle* deſcribes a *Tyranny* to be; for under the worſt of Kings, though many particular men have unjuſtly ſuffered, yet the Multitude, or the People in general have found Benefit and Profit by the Government.

(*a*) L. 3. c. 7.

(*b*) L. 4. c. 10.

(*c*) L. 3. c. 6.

It being apparent that the different kinds of Government in *Ariſtotle*, ariſe onely from the difference of the number of Governours, whether *one, a few, or many*: there may be as many ſeveral Forms of Governments as there be ſeveral Numbers, which are infinite; ſo that not onely the ſeveral Parts of a City or Commonweal, but alſo the ſeveral Numbers of ſuch Parts may cauſe multiplicity of Forms of Government by *Ariſtotle*'s Principles.

It

It is further obſervable in Aſſemblies, that it is not the whole Aſſembly, but the major part onely of the Aſſembly that hath the Government; for *that which pleaſeth the moſt, is alwayes ratified*, ſaith Ariſtotle, *lib.* 4. *c.* 4. by this means one and the ſame Aſſembly may make, at one Sitting, ſeveral Forms of Commonweals, for in ſeveral Debates and Votes the ſame number of men, or all the ſelf-ſame men do not ordinarily agree in their Votes; and the leaſt Diſagreement, either in the Perſons of the men, or in their number, alters the Form of Government. Thus in a Commonweal, one part of the Publick Affairs ſhall be ordered by one Form of Government, and another part by another Form, and a third part by a third Form, and ſo *in infinitum*. How can that have the Denomination of a Form of Government, which laſts but for a moment onely, about one fraction of Buſineſs? for in the very inſtant, as it were in the Twinkling of an eye, while their Vote laſteth, the Government muſt begin and end.

To be governed, is nothing elſe but to be obedient and ſubject to the Will or Command of another; it is the Will in a man that governs; ordinarily mens Wills are divided according to their ſeveral Ends or Intereſts; which moſt times are different, and many times contrary the one to the other, and in ſuch caſes where the Wills of the major part of the Aſſembly do unite and agree in one Will, there is a *Monarchy* of many Wills in one, though it be called an *Ariſtocracy* or *Democracy*, in regard of the ſeveral Perſons; it is not the many Bodies, but the one Will or Soul of the Multitude that

that governs. (*a*) *Where one is ſet up out of many, the People becometh a Monarch, becauſe many are Lords, not ſeparately, but altogether as one; therefore ſuch a People as if it were a* Monarch, *ſeeks to bear Rule alone* L. 4. c. 4.

(*a*) Μόναρχος γὰρ ὁ δῆμος γίνεται, σύνθετος εἰς ἓν ἐκ πολλῶν· οἱ γὰρ πολλοὶ κύριοι εἰσὶν ὡς ἕκαστος, ἀλλὰ πάντες. ὁ δὲ ὧν τοιοῦτος δῆμος ἄτε μόναρχος ὢν ζητεῖ μοναρχεῖν.

It is a falſe and improper Speech to ſay that a whole Multitude, Senate, Councel, or any Multitude whatſoever doth govern where the major part only rules; becauſe many of the Multitude that are ſo aſſembled, are ſo far from having any part in the Government, that they themſelves are governed againſt and contrary to their Wills; there being in all Government various and different Debates and Conſultations, it comes to paſs oft-times, that the major part in every Aſſembly, differs according to the ſeveral Humours or Fancies of men; thoſe who agree in one Mind, in one Point, are of different Opinions in another; every Change of Buſineſs, or new Matter begets a new major part, and is a Change both of the Government and Governours; the Difference in the Number, or in the Qualities of the Perſons that govern, is the only thing that cauſes different Governments, according to *Ariſtotle*, who divides his Kinds of Government to the Number of one, a few, or many. As amongſt the *Romans* their Tribunitial Laws had ſeveral Titles, according to the Names of thoſe Tribunes of the People, that preferr'd and made them. So in other Governments, the Body of their Acts and Ordinances,

ces, is compoſed of a Multitude of momentary Monarchs, who by the Strength and Power of their Parties or Factions are ſtill under a kind of a civil War, fighting and ſcratching for the legiſlative miſcellany, or medly of ſeveral Governments. If we conſider each Government according to the nobler Part of which it is compoſed, it is nothing elſe but a Monarchy of Monothelites, or of many men of one Will, moſt commonly in one Point only: but if we regard only the baſer part, or Bodies of ſuch Perſons as govern, there is an interrupted Succeſſion of a Multitude of ſhort-lived Governments, with as many Intervalls of Anarchy; ſo that no man can ſay at any time, that he is under any Form of Government; for in a ſhorter time than the word can be ſpoken, every Government is begun and ended. Furthermore in all Aſſemblies, of what Quality ſoever they be, whether *Ariſtocratical* or *Democratical*, as they call them, they all agree in this one Point, to give that honourable Regard to Monarchy, that they do interpret the major, or prevailing part in every Aſſembly to be but as one man, and ſo do feign to themſelves a kind of Monarchy.

Though there be neither Precept nor Practice in Scripture, nor yet any Reaſon alledged by *Ariſtotle* for any Form of Government, but only Monarchy; yet it is ſaid that it is evident to common Senſe, that of old time *Rome*, and in this preſent Age *Venice*, and the *Low-Countries*, enjoy a Form of Government different from Monarchy: Hereunto it may be anſwered, That a People may live together in Society, and help one another; and yet not be under any Form of Govern-

ment;

ment; as we ſee Herds of Cattel do, and yet we may not ſay they live under Government. For Government is not a Society only to live, but to live well and vertuouſly. This is acknowledged by *Ariſtotle*, who teacheth that

(a) *the End of a City, is to live bleſſedly and honeſtly. Political Communities are ordained for honeſt Actions, but not for living together only.*

(a) Τέλος πόλεως τὸ εὖ ζῆν δι' αμφότερα καὶ καλῶς. τῶν καλῶν πράξεων χάριν δετέον εἶναι τὴν πολιτικὴν κοινωνίαν, ἀλλὰ διὰ τὸ συζῆν.

Now there be two things principally required to a bleſſed and honeſt life: *Religion towards God*, and *Peace towards men*: that is, *a quiet and peaceable Life in all Godlineſs and Honeſty*, 1 *Tim.* 2. 2. Here then will be the Queſtion, Whether Godlineſs and Peace can be found under any Government but *Monarchy*, or whether *Rome*, *Venice*, or the *Low-Countries* did enjoy theſe under any popular Government. In theſe two Points, let us firſt briefly examine the Roman Government, which is thought to have been the moſt glorious.

For Religion, we find preſently after the Building of the City by *Romulus*, the next King, *Numa*, moſt devoutly eſtabliſhed a Religion, and began his Kingdom with the Service of the Gods; he forbad the Romans to make any Images of God, which Law laſted and was obſerved 170 Years, there being in all that time no Image or Picture of God, in any Temple or Chappel of *Rome*; alſo he erected the Pontifical Colledge, and was himſelf the firſt Biſhop or *Pontifex*; Theſe Biſhops

ſhops were to render no Account either to the Senate or Commonalty. They determined all Queſtions concerning Religion, as well between Prieſts as between private men: They puniſhed inferiour Prieſts, if they either added or detracted from the eſtabliſhed Rites, or Ceremonies, or brought in any new thing into Religion. The chief Biſhop, *Pontifex Maximus*, taught every man how to honour and ſerve the Gods. This Care had Monarchy of Religion.

But after the Expulſion of Kings, we do not find during the Power of the People, any one Law made for the Benefit or Exerciſe of Religion: there be two Tribunitian Laws concerning Religion, but they are meerly for the Benefit of the Power of the People, and not of Religion. *L. Papirius*, a Tribune, made a Law called *Lex Papiria*, that it *ſhould not be lawful for any to conſecrate either Houſes, Grounds, Altars, or any other things without the Determination of the People.* *Domitius Ænobarbus* another Tribune enacted a Law called *Domitia Lex*, that *the Pontifical Colledge ſhould not, as they were wont, admit whom they would into the Order of Prieſthood, but it ſhould be in the Power of the People*; and becauſe it was contrary to their Religion, that Church-Dignities ſhould be beſtowed by the common People; hence for very Shame he ordained, that the leſſer part of the People, namely ſeventeen Tribes ſhould elect whom they thought fit, and afterwards the Party elected ſhould have his Confirmation or admiſſion from the Colledge: thus by a Committee of ſeven Tribes taken out of thirty five, the ancient Form of Religion was alter'd and reduced to the Power of the leſſer part of the People. This was the

great

great Care of the People to bring Ordination and Conſecration to the Laity.

The Religion in *Venice*, and the *Low-Countries* is ſufficiently known, much need not be ſaid of them: they admirably agree under a ſeeming contrariety; it is commonly ſaid, that one of them hath all Religions, and the other no Religion; the Atheiſt of *Venice* may ſhake hands with the Sectary of *Amſterdam*. This is the Liberty that a popular eſtate can brag of, every man may be of any Religion, or no Religion, if he pleaſe; their main Devotion is exerciſed only in oppoſing and ſuppreſſing Monarchy. They both agree to exclude the Clergy from medling in Government, whereas in all Monarchies both before the Law of *Moſes*, and under it, and ever ſince: all Barbarians, Græcians, Romans, Infidels, Turks, and Indians, have with one Conſent given ſuch Reſpect and Reverence to their Prieſts, as to truſt them with their Laws; and in this our Nation, the firſt Prieſts we read of before Chriſtianity, were the *Druides*, who as *Cæſar* ſaith, *decided and determined Controverſies, in Murder, in Caſe of Inheritance, of Bounds of Lands, as they in their Diſcretion judged meet; they grant Rewards and Puniſhments.* It is a Wonder to ſee what high Reſpect even the great *Turk* giveth to his *Mufti*, or chief Biſhop, ſo neceſſary is Religion to ſtrengthen and direct Laws.

To conſider of the Point of Peace, It is well known, that no People ever enjoyed it without Monarchy. *Ariſtotle* ſaith, *the Lacedemonians preſerved themſelves by Warring; and after they had gotten to themſelves the Empire, then were they preſently undone, for that they could not live at Reſt, nor do any better Exerciſe, than the Exerciſe of War*, l. 2. c. 7.

Af-

After *Rome* had expelled Kings, it was in perpetual War, till the time of the Emperours: once only was the Temple of *Janus* ſhut, after the end of the firſt *Punique War*, but not ſo long as for one year, but for ſome Moneths. It is true, as *Oroſius* ſaith, that *for almoſt 700 years, that is, from* Tullus Hoſtilius *to* Auguſtus Cæſar, *only for one Summer, the Bowels of* Rome *did not ſweat Blood.* On the Behalf of the *Romans* it may be ſaid, that though the Bowels of *Rome* did always ſweat Blood, yet they did obtain moſt glorious Victories abroad. But it may be truly anſwered, if all the *Roman* Conqueſts had no other Foundation but Injuſtice; this alone ſoils all the Glory of her warlike Actions. The moſt glorious War that ever *Rome* had, was with *Carthage*; the Beginning of which War, Sir *Walter Raleigh* proves to have been moſt unjuſtly undertaken by the *Romans*, in confederating with the *Mamertines*, and Aiding of Rebels, under the Title of protecting their Confederates; whereas Kings many times may have juſt Cauſe of War, for recovering and preſerving their Rights to ſuch Dominions as fall to them by Inheritance or Marriage; a Popular Eſtate, that can neither marry, nor be Heir to another, can have no ſuch Title to a War in a Foreign Kingdom; and to ſpeak the Truth, if it be rightly conſidered, the whole time of the Popularity of *Rome*, the *Romans* were no other than the only proſperous and glorious Thieves, and Robbers of the World.

If we look more narrowly into the Roman Government, it will appear, that in that very Age, wherein *Rome* was moſt victorious, and ſeemed to be moſt popular, ſhe owed moſt of her Glory to an apparent kind of *Monarchy*. For it was the Kingly Power

Power of the *Conſuls*, *who* (as *Livy* ſaith) *had the ſame Royal Juriſdiction, or abſolute Power that the Kings had, not any whit diminiſhed or abated, and held all the ſame Regal Enſignes of ſupreme Dignity*, which helpt *Rome* to all her Conqueſts: whiles the Tribunes of the People were ſtrugling at home with the Senate about Election of Magiſtrates, enacting of Laws, and calling to Account, or ſuch other popular Affairs, the Kingly Conſuls gained all the Victories abroad: Thus *Rome* at one and the ſame time was broken and diſtracted into two Shewes of Government; the Popular, which ſerved only to raiſe Seditions and Diſcords within the Walls, whileſt the Regal atchieved the Conqueſts of Foreign Nations and Kingdomes. *Rome* was ſo ſenſible of the Benefit and Neceſſity of *Monarchy*, that in her moſt deſperate Condition and Danger, when all other Hopes failed her, ſhe had ſtill Reſort to the Creation of a Dictator, who for the time was an abſolute King; and from whom no Appeal to the People was granted, which is the royalleſt Evidence for *Monarchy* in the World; for they who were drawn to ſwear, they would ſuffer no King of *Rome*, found no Security but in Perjury, and breaking their Oath by admitting the Kingly Power in ſpight of their Teeth, under a new name of a Dictator or Conſul: a juſt Reward for their wanton expelling their King for no other Crime they could pretend but Pride, which is moſt tolerable in a King of all men: and yet we find no particular Point of Pride charged upon him, but that he enjoyned the *Romans* to labour in cleanſing, and caſting of Ditches, and paving their Sinks: an Act both for the Benefit and Ornament of the City, and therefore com-

mendable in the King: But the Citizens of *Rome*, who had been Conquerours of all Nations round about them, could not endure of Warriers to become Quarriers, and Day-labourers. Whereas it is ſaid, that *Tarquin* was expelled for the Rape committed by his Son on *Lucrece*; it is unjuſt to condemn the Father for the Crime of his Son; it had been fit to have petitioned the Father for the Puniſhment of the Offender: The Fact of young *Tarquin* cannot be excuſed, yet without wrong to the Reputation of ſo chaſte a Lady as *Lucreee* is reputed to be, it may be ſaid, ſhe had a greater Deſire to be thought chaſte, than to be chaſte; ſhe might have died untouched, and unſpotted in her Body, if ſhe had not been afraid to be ſlandered for Inchaſtity; both *Dionyſius Halicarnaſſeus*, and *Livie*, who both are her Friends, ſo tell the Tale of her, as if ſhe had choſen rather to be a Whore, than to be thought a Whore. To ſay Truth, we find no other Cauſe of the Expulſion of *Tarquin*, than the Wantonneſs, and Licentiouſneſs of the People of *Rome*.

This is further to be conſidered in the *Roman* Government, that all the time between their Kings, and their Emperours, there laſted a continued ſtrife, between the Nobility and Commons, wherein by Degrees the Commons prevailed at laſt, ſo to weaken the Authority of the Conſuls and Senate, that even the laſt ſparks of *Monarchy* were in a manner extinguiſhed, and then inſtantly began the Civil War, which laſted till the Regal Power was quickly brought home, and ſetled in *Monarchy*. So long as the Power of the Senate ſtood good for the Election of Conſuls, the Regal Power was preſerved

ſerved in them, for the Senate had their firſt Inſtitution from *Monarchy*: It is worth the noting, that in all thoſe places that have ſeemed to be moſt popular, that weak Degree of Government, that hath been exerciſed among them, hath been founded upon, and been beholden unto *Monarchical* Principles, both for the Power of aſſembling, and manner of conſulting: for the entire and groſs Body of any People, is ſuch an unweildy and diffuſed thing as is not capable of uniting, or congregating, or deliberating in an entire Lump, but in broken Parts, which at firſt were regulated by *Monarchy*.

Furthermore it is obſervable, that *Rome* in her chief Popularity, was oft beholden for her Preſervation to the Monarchical Power of the Father over the Children: by means of this Fatherly Power, ſaith *Bodin*, the Romans flouriſhed in all Honour and Vertue, and oftentimes was their Commonweal thereby delivered from moſt imminent Deſtruction, when the Fathers drew out of the Conſiſtory, their Sons being Tribunes publiſhing Laws tending to Sedition. Amongſt others *Caſſius* threw his Son headlong out of the Conſiſtory, publiſhing the Law *Agraria* (for the Diviſion of Lands) in the Behoof of the People, and after by his own private Judgment put him to Death, the Magiſtrates, Serjeants, and People ſtanding thereat aſtonied, and not daring to withſtand his Fatherly Authority, although they would with all their Power have had that Law for Diviſion of Lands; which is ſufficient Proof, this Power of the Father not only to have been ſacred and inviolable, but alſo to have been lawful for him, either by Right or Wrong to

diſpoſe of the Life and Death of his Children, even contrary to the Will of the Magiſtrates and People.

It is generally believed that the Government of *Rome*, after the Expulſion of Kings, was popular; *Bodin* endeavours to prove it, but I am not ſatisfied with his Arguments, and though it will be thought a Paradox, yet I muſt maintain, it was never truly popular.

Firſt it is difficult to agree, what a popular Government is, *Ariſtotle* ſaith it is where *Many or a Multitude do rule*; he doth not ſay where *the People*, or the *major part of the People*, or *the Repreſentors of the People govern*.

*Bodin* affirms *if all the People be intereſſed in the Government, it is a Popular Eſtate*, Lib. 2. c. 1. but after in the ſame Chapter he reſolves, that *it is a Popular Eſtate, when all the People, or the greater part thereof hath the Sovereignty*, and he puts the Caſe that if there be threeſcore thouſand Citizens, and forty thouſand of them have the Sovereignty, and twenty thouſand be excluded, it ſhall be called a popular Eſtate: But I muſt tell him, though fifty nine thouſand, nine hundred, ninety nine of them govern, yet it is no popular Eſtate, for if but one man be excluded, the ſame reaſon that excludes that one man, may exclude many hundreds, and many thouſands, yea, and the major part it ſelf; if it be admitted, that the People are or ever were free by Nature, and not to be governed, but by their own Conſent, it is moſt unjuſt to exclude any one man from his Right in Government; and to ſuppoſe the People ſo unnatural, as at the firſt to have all

all conſented to give away their Right to a major part, (as if they had Liberty given them only to give away, and not to uſe it themſelves) is not onely improbable, but impoſſible; for the whole People is a thing ſo uncertain and changeable, that it alters every moment, ſo that it is neceſſary to ask of every Infant ſo ſoon as it is born its Conſent to Government, if you will ever have the Conſent of the whole People.

Moreover, if the Arbitrary Tryal by a Jury of twelve men, be a thing of that admirable Perfection and Juſtice as is commonly believed, wherein the *Negative Voice* of every ſingle Perſon is preſerved, ſo that the diſſent of any of the twelve fruſtrates the whole Judgment: How much more ought the natural freedom of each man be preſerved, by allowing him his *Negative* Voice, which is but a continuing him in that eſtate, wherein, it is confeſſed, Nature at firſt placed him; Juſtice requires that no one Law ſhould bind all, except all conſent to it, there is nothing more violent and contrary to Nature, than to allow a major part, or any other greater part leſs than the whole to bind all the People.

The next difficulty to diſcovering what a Popular Eſtate is, is to find out where the Supreme Power in the *Roman* Government reſted; it is *Bodin*'s opinion, that *in the* Roman *ſtate the Government was in the Magiſtrates, the Authority and Counſel in the Senate, but the Sovereign Power and Majeſty in the People.* Lib. 2. c. 1. So in his firſt Book his Doctrine is, that *the ancient* Romans *ſaid, Imperium in Magiſtratibus, Authoritatem*

*in Senatu, Poteſtatem in plebe, Majeſtatem in Populo jure eſſe dicebant.* Theſe four words *Command*, *Authority*, *Power*, and *Majeſty* ſignifie ordinarily, one and the ſame thing, to wit, the Sovereignty, or ſupreme Power, I cannot find that *Bodin* knows how to diſtinguiſh them; for they were not diſtinct Faculties placed in ſeveral Subjects, but one and the ſame thing diverſly qualified, for *Imperium*, *Auctoritas*, *Poteſtas*, and *Majeſtas* were all originally in the Conſuls; although for the greater ſhew the Conſuls would have the Opinion, and Conſent of the Senate who were never called together, nor had their Advice asked, but when and in what Points only it pleaſed the Conſuls to propound: ſo that properly *Senatuſconſultum* was only a Decree of the Conſuls, with the Advice of the Senators: And ſo likewiſe the Conſuls, when they had a mind to have the Countenance of an ampler Council, they aſſembled the *Centuries*, who were reckoned as the whole People, and were never to be aſſembled, but when the Conſuls thought fit to propound ſome Buſineſs of great weight unto them; ſo that *juſſus populi*, the Command of the People which *Bodin* ſo much magnifies, was properly *juſſus Conſulum*, the Command of the Conſuls, by the Advice or Conſent of the Aſſembly of the Centuries, who were a Body compoſed of the Senators, and the reſt of the Patritians, Knights, and Gentlemen, or whole Nobility together with the Commons: for the ſame men who had Voices in Senate, had alſo their Votes allowed in the Aſſembly of the Centuries, according to their ſeveral Capacities.

It may further appear, that the Roman Govern-

ment,

ment was never truly popular, for that in her greateſt Show of Popularity, there were to be found above ten Servants for every Citizen or Freeman, and of thoſe Servants, not one of them was allowed any Place, or Voice in Government: If it be ſaid that the *Roman* Servants were Slaves taken in War, and therefore not fit to be Freemen; to this it may be anſwered, that if the Opinion of our modern Politicians be good, which holds that *all men are born Free by Nature*, or if but the Opinion of *Ariſtotle* be found, who ſaith that *by Nature ſome men are Servants, and ſome are Maſters*, then it may be unnatural, or unjuſt to make all Priſoners in War Servants or (as they are now called) *Slaves*, a Term not uſed in the Popular Governments, either of *Rome or Greece*; for in both Languages, the uſual word that doth anſwer to our late Term of *Slave*, is but *Servus* in Latin, and Δοῦλος in Greek. Beſides, if the Wars of the *Romans*, by which they gained ſo many Servants were unjuſt, as I take all offenſive War to be without a ſpecial Commiſſion from God, and as I believe all the Roman Wars were, that were made for the Enlargement of their Empire, then we may conclude, that the *Romans* were the notableſt Plagiaries, or Men-ſtealers in the World.

But to allow the leſſer part of the People of *Rome*, who called themſelves Citizens, to have had a juſt Right to exclude all Servants from being a part of the people of *Rome*, let us enquire whether the major part of thoſe, whom they allowed to be Citizens, had the Government of *Rome*, whereby we may diſcover eaſily how notoriouſly the poorer and

greater part of the Citizens were guld of their Share in Government; There were two famous manners of their aſſembling the People of *Rome*: the firſt was by *Claſſes*, as they called them, which were divided into *Centuries*; the ſecond was by *Tribes*, *or Wards*; the former of theſe was a Ranking of the People, according to their Abilities or Wealth; the latter according to the Place or Ward, wherein every Citizen dwelt: In the Aſſemblies of neither of theſe, had the major part of the People the Power of Government, as may thus be made appear.

Firſt, for the Aſſembly of the *Centuries*, there were ſix Degrees or *Claſſes* of men according to their Wealth; the firſt *Claſſis* was of the richeſt men in *Rome*, none whereof were under 200 *l.* in Value: The Valuation of the ſecond Claſſis was not under fourſcore Pounds; and ſo the 3. the 4. and the fifth Claſſis were each a Degree one under another. The ſixth Claſſis contained the poorer ſort, and all the Rabble. Theſe ſix Claſſes were ſubdivided into Hundreds, or Centuries.

| | | |
|---|---|---|
| The firſt Claſſis had | 98 | *CENTURIES.* |
| The 2. had | 22 | |
| The 3. Claſſis had. | 20 | |
| The 4. had | 22 | |
| The 5. Claſſis had | 30 | |
| The 6. Claſſis had | 1 | |
| | 193 | |

The Claſſes, and Centuries being thus ordered, when the Aſſembly came to give their Votes, they

they did not give their Voices by the Poll, which is the true popular way: but each Century Voted by it ſelf, each Century having one Voice, the major part of the Centuries carried the Buſineſs: Now there being fourſcore and eighteen Centuries in the firſt Claſſis, in which all the Patricians, Senators, Noblemen, Knights, and Gentlemen of *Rome*, were inrolled, being more in Number, and above half the Centuries, muſt needs have the Government, if they agreed all together in their Votes, becauſe they Voted firſt, for when 97 Centuries had agreed in their Votes, the other Centuries of the inferiour Claſſis, were never called to Vote; thus the Nobles, and richer men who were but few in Compariſon of the Common People did bear the chief Sway, becauſe all the poorer ſort, or proletarian Rabble, were clap'd into the ſixth Claſſis, which in reckoning were allowed but the ſingle Voice of one Century, which never came to Voting: whereas in Number they did far exceed all the five other Claſſes or Centuries, and if they had been allowed the Liberty of other Citizens, they might have been juſtly numbred for a thouſand Centuries, or Voices in the Aſſembly; This Device of packing ſo many thouſands into one Century, did exclude far the greateſt part of the People from having a part in the Government.

Next, for the Aſſembly of the People of *Rome* by Tribes, it muſt be conſidered, that the Tribes did not give their Voices by the Poll altogether, which is the true way of popular Voting, but each Tribe or Ward did Vote by it ſelf, and the Votes of the major part (not of the People but) of the Tribes

Tribes did ſway the Government, the Tribes being unequal, as all Diviſions by Wards uſually are, becauſe the Number of the People of one Tribe, is not juſt the ſame with the Number of the People of each other Tribe; whence it followed, that the major Number of the Tribes might poſſibly be the minor Number of the People, which is a deſtroying of the Power of the major Part of the People.

Adde hereunto, that the Nobility of *Rome* were excluded from being preſent at the Aſſembly of the Tribes; and ſo the moſt conſiderable part of the People was wanting, therefore it could not be the Voices of the major part of the People, where a great part of the People were allowed no Voices at all, for it muſt be the major part of the whole, and not of a Part of the People, that muſt denominate a popular Government.

Moreover it muſt be noted, that the Aſſembly of the Tribes was not originally the Power of the People of *Rome*, for it was almoſt 40 years after the Rejection of Kings before an Aſſembly of Tribes were thought on, or ſpoken of; for it was the Aſſembly of the People by Centuries, that agreed to the Expulſion of Kings, & creating of Conſuls in their Room, alſo the Famous Laws of the twelve Tables were ratified by the Aſſembly of the Centuries. This Aſſembly by Centuries, as it was more Ancient, than that by Tribes; ſo it was more truly popular, becauſe all the Nobility, as well as the Commons, had Voices in it: The Aſſembly by Tribes, was pretended at firſt, only to elect Tribunes of the People, and other inferiour Magiſtrates, to determine of leſſer Crimes that were not Capital, but only

only finable; and to decree that Peace ſhould be made; but they did not meddle with denouncing War to be made, for that high Point did belong only to the Aſſembly of the Centuries; and ſo alſo did the judging of Treaſon, and other Capital Crimes. The Difference between the Aſſembly of the Tribes, and of the Centuries, is very material; for though it be commonly thought, that either of theſe two Aſſemblies were eſteemed to be the People, yet in Reality it was not ſo, for the Aſſembly of the Centuries only could be ſaid to be the People, becauſe all the Nobility were included in it as well as the Commons, whereas they were excluded out of the Aſſembly of the Tribes; and yet in Effect, the Aſſembly of the Centuries was but as the Aſſembly of the Lords, or Nobles only, becauſe the leſſer, and richer part of the People had the Sovereignty, as the Aſſembly of the Tribes was, but the Commons only.

In maintenance of the popular Government of *Rome*, *Bodin* objects, that there could be no regal Power in the two Conſuls, who could neither make Law, nor Peace, nor War. The Anſwer is, though there were two Conſuls, yet but one of them had the Regality; for they governed by Turns, one Conſul one Moneth, and the other Conſul another Moneth; or the firſt one day, and the ſecond another day. That the Conſuls could make no Laws is falſe, it is plain by *Livy*, that they had the Power to make Laws, or War, and did execute that Power, though they were often hindered by the Tribunes of the People; not for that the Power of making Laws or War, was ever taken away from the Conſuls, or communicated to the Tribunes, but

but onely the Exerciſe of the Conſular Power was ſuſpended by a ſeeming humble way of *interceſſion* of the Tribunes; The Conſuls by their firſt Inſtitution had a lawful Right to do thoſe things, which yet they would not do by reaſon of the ſhortneſs of their Reigns, but choſe rather to countenance their actions with the title of a Decree of the Senate (who were their private Councel) yea, and ſometimes with the Decree of the Aſſembly of the Centuries (who were their Publick Counſel) for both the Aſſembling of the Senate, and of the Centuries, was at the Pleaſure of the Conſuls, and nothing was to be propounded in either of them, but at the Will of the Conſuls: which argues a Sovereignty in them over the Senate and Centuries; the Senate of *Rome* was like the Houſe of Lords, the Aſſembly of the Tribes reſembled the Houſe of Commons, but the Aſſembling of the *Centuries*, was a Body compoſed of Lords and Commons united to Vote together.

The Tribunes of the People bore all the Sway among the Tribes, they called them together when they pleaſed, without any Order, whereas the Centuries were never Aſſembled without Ceremony, and Religious obſervation of the Birds by the Augurs, and by the Approbation of the Senate, and therefore were ſaid to be *auſpicata*, and *ex authoritate Patrum.*

Theſe things conſidered, it appears, that the Aſſembly of the Centuries was the only legitimate, and great Meeting of the People of *Rome*: as for any Aſſembling, or Electing of any Truſtees, or Repreſentors of the People of *Rome*, in nature of the

the modern Parliaments, it was not in Uſe, or ever known in *Rome*.

Above two hundred and twenty years after the expulſion of Kings, a ſullen humour took the Commons of *Rome*, that they would needs depart the City to *Janiculum*, on the other ſide of *Tybur*, they would not be brought back into the City, until a Law was made, That a *Plebiſcitum*, or a Decree of the Commons might be obſerved for a Law; this Law was made by the Dictator *Hortenſius*, to quiet the Sedition, by giving a part of the Legiſlative Power to the Commons, in ſuch inferiour matters only, as by Toleration and Uſurpation had been practiſed by the Commons. I find not that they deſired an Enlargement of the Points which were the Object of their Power, but of the Perſons, or Nobility that ſhould be ſubject to their Decrees: the great Power of making War, of creating the greater Magiſtrates, of judging in Capital Crimes, remained in the Conſuls, with the Senate, and Aſſembly of the Centuries.

For further manifeſtation of the broken and diſtracted Government of *Rome*, it is fit to conſider the original Power of the Conſuls, and of the Tribunes of the Commons, who are ordinarily called the Tribunes of the People.

Firſt, it is undeniable, that upon the expulſion of Kings, Kingly power was not taken away, but only made Annual and changeable between two Conſuls; who in their Turns, and by courſe had the Sovereignty, and all Regal power; this appears plainly in *Livy*, who tells us, that *Valerius Publicola* being Conſul, he himſelf alone ordained a Law,

a Law, and then aſſembled a general Seſſion.

*Turentillus Arſa* inveighed and complained againſt *the Conſul's Government, as being ſo abſolute, and in Name only leſs odious than that of Kings, but in Fact more cruel; for inſtead of one Lord the City had received twain, having Authority beyond all Meaſure, unlimited and infinite. Sextius* and *Licinus* complain, that *there would never be any indifferent Courſe, ſo long as the Nobles kept the Sovereign Place of Command, and the Sword to ſtrike, whiles the poor Commons have only the Buckler*; their Concluſion was, that *it remains, that the Commons bear the Office of Conſuls too, for that were a Fortreſs of their Liberty, from that day forward, ſhall the Commons be Partakers of thoſe things, wherein the Nobles now ſurpaſs them, namely Sovereign Rule and Authority.*

The Law of the twelve Tables affirms, *Regio imperio duo ſunto, iique Conſules appellantor.* Let *two have regal Power, and let them be called Conſuls*: *alſo the* Judgment of *Livy* is, that *the Sovereign Power was tranſlated from Conſuls to Decemvirs, as before from Kings to Conſuls.* Theſe are proofs ſufficient to ſhew the Royal Power of the Conſuls.

About ſixteen years after the firſt Creation of Conſuls, the Commons finding themſelves much run into Debt, by waſting their Eſtates in following the Wars; and ſo becoming, as they thought, oppreſſed by Uſury, and caſt into Priſon by the Judgment, and Sentence of the Conſuls, they grievouſly complained of Uſury, and of the Power of the Conſuls, and by Sedition prevailed, and obtained Leave to chooſe among themſelves Magiſtrates called Tribunes of the People, who by their *Interceſſion* might preſerve the Commons from being oppreſſed

preſſed, and ſuffering Wrong from the Conſuls: and it was further agreed, that the Perſons of thoſe Tribunes ſhould be ſacred, and not to be touched by any. By means of this Immunity of the Bodies of the Tribunes from all Arreſts or other Violence, they grew in time by Degrees to ſuch Boldneſs, that by ſtopping the legal Proceedings of the Conſuls (when they pleaſed to intercede) they raiſed ſuch an Anarchy oft times in Government, that they themſelves might act, and take upon them, what Power ſoever they pleaſed (though it belonged not to them.) This Gallantry of the Tribunes was the Cauſe, that the Commons of *Rome*, who were diligent Pretenders to Liberty, and the great Maſters of this part of Politiques, were thought the only famous Preſervers, and Keepers of the Liberty of *Rome*. And to do them right, it muſt be confeſſed, they were the only men that truly underſtood the Rights of a *Negative Voice*; if we will allow every man to be naturally free till they give their Conſent to be bound, we muſt allow every particular Perſon a Negative Voice; ſo that when as all have equal Power, and are as it were fellow-Magiſtrates or Officers, each man may impeach, or ſtop his Fellow-Officers in their Proceedings, this is grounded upon the general Reaſon of all them, which have any thing in Common, where he which forbiddeth, or denyeth, hath moſt Right; becauſe his Condition in that Caſe is better than his which commandeth, or moveth to proceed; for every Law or Command, is in it ſelf an Innovation, and a Diminution of ſome part of popular Liberty; for it is no Law except it reſtrain Liberty; he that by his negative Voice doth forbid or hinder the Proceeding o \anew

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Law, doth but preſerve himſelf in that Condition of Liberty, wherein Nature hath placed him, and whereof he is in preſent Poſſeſſion; the Condition of him thus in Poſſeſſion being the better, the ſtronger is his Prohibition, any ſingle man hath a juſter Title to his *Negative Voice*, than any Multitude can have to their Affirmative; to ſay the People are free, and not to be governed, but by their own Conſent, and yet to allow a major part to rule the whole, is a plain Contradiction, or a deſtruction of natural Freedom. This the Commons of *Rome* rightly underſtood, and therefore the tranſcendent Power of the Negative Voice of any one Tribune, being able of it ſelf to ſtay all the Proceedings, not of the Conſuls and Senate only, and other Magiſtrates, but alſo of the reſt of his fellow-Tribunes, made them ſeem the powerfulleſt men in all *Rome*; and yet in Truth they had no Power or Juriſdiction at all, nor were they any Magiſtrates, nor could they lawfully call any man before them, for they were not appointed for Adminiſtration of Juſtice, but only to oppoſe the Violence, and Abuſe of Magiſtrates, by interceeding for ſuch as appealed, being unjuſtly oppreſſed; for which Purpoſe at firſt they ſate only without the Door of the Senate, and were not permitted to come within the Doors: this Negative Power of theirs was of Force only to hinder, but not to help the Proceedings in Courts of Juſtice; to govern, and not to govern the People. And though they had no Power to make Laws, yet they took upon them to propound Laws, and flattered and humoured the Commons by the *Agrarian* and *Frumentarian* Laws, by the firſt they divided the Common fields, and conquered Lands among

among the Common People; and by the latter, they afforded them Corn at a cheaper or lower price: by theſe means theſe Demagogues or Tribunes of the Commons led the Vulgar by the Noſes, to allow whatſoever Uſurpations they pleaſed to make in Government.

The Royal Power of the Conſuls was never taken away from them by any Law that I hear of, but continued in them all the time of their pretended popular Government, to the very laſt, though repined at, and oppoſed in ſome particulars by the Commons.

The *No-Power*, or *Negative Power* of the Tribunes, did not long give content to the Commons, and therefore they deſired, that one of the Conſuls might be choſen out of the Commonalty: the eager propounding of this point for the Commons, and the diligent oppoſing of it by the Nobility or Senate, argues how much both parties regarded the Sovereign power of a Conſul; the Diſpute laſted fourſcore years within two: the Tribunes preſſing it upon all advantages of opportunity, never gave over till they carried it by ſtrong hand, or ſtubbornneſs, hindring all Elections of the *Curule*, or greater Magiſtrates, for five years together, whereby the Nobles were forced to yield the Commons a Conſul's place, or elſe an *Anarchy* was ready to deſtroy them all; and yet the Nobility had for a good while allowed the Commons *Military Tribunes with Conſular Power*, which, in effect or ſubſtance, was all one with having one of the Conſuls a Commoner, ſo that it was the bare Name of a Conſul which the Commons ſo long ſtrived for with the Nobility: In this contention,

ſome Years Conſuls were choſen, ſome years *Military* Tribunes in ſuch Confuſion, that the *Roman* Hiſtorians cannot agree among themſelves, what Conſuls to aſſign, or name for each Year, although they have *Capitoline* Tables, *Sicilian* and *Greek* Regiſters, and Kalenders, Fragments of *Capitoline Marbles*, *linen Books or Records* to help them: a good while the Commons were content with the Liberty of having one of the Conſuls a Commoner; but about fourſcore years after they enjoyed this Privilege, a Deſire took them to have it enacted, that a Decree of the Commons called a *plebiſcitum* might be obſerved for a Law, *Hortenſius* the Dictator yielded to enact it, thereby to bring back the Seditious Commons, who departed to *Janiculum* on the other ſide of *Tybur*, becauſe they were deeply engaged in Debt in regard of long Seditions and Diſſenſions. The eleventh Book of *Livy*, where this Sedition is ſet down, is loſt; we have only a touch of it it in *Florus* his Epitome, and St. *Auguſtine* mentions the Plundring of many Houſes by the Commons at their departing: this Sedition was above 220 years after the Expulſion of Kings, in all which time, the People of *Rome* got the Spoil of almoſt all *Italy*, and the wealth of very many rich Cities: and yet the Commons were in ſo great Penury, and over whelmed with Debts that they fell to plunder the rich Houſes of the Citizens, which ſounds not much for the Honour of a popular Government. This communicating of a legiſlative Power to the Commons, touching Power of enfranchiſing Allies, Judgments Penal, and Fines, and thoſe Ordinances that concerned the Good of the Commons called *Plebiſcita*, was a dividing

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of the Supreme Power, and the giving a Share of it to others, as well as to the Conſuls, and was in effect to deſtroy the legiſlative Power, for to have two Supremes is to have none, becauſe the one may deſtroy the other, and is quite contrary to the indiviſible nature of Sovereignty. The Truth is, the Conſuls, having but annual Sovereignty, were glad for their own Safety, and Eaſe in Matters of great Importance, and Weight, to call together ſometimes the Senate, who were their ordinary Councel, and many times the Centuries of the People, who were their Councel extraordinary, that by their Advice they might countenance, and ſtrengthen ſuch Actions as were full of Danger and Envy: and thus the Conſuls by weakening their original Power brought the Government to Confuſion, civil Diſſenſion, and utter Ruine: ſo dangerous a thing it is to ſhew Favour to Common People, who interpret all Graces and Favours for their Rights, and juſt Liberties: the Conſuls following the Advice of the Senate or People, did not take away their Right of Governing no more than Kings loſe their Supremacy by taking Advice in Parliaments.

Not only the Conſuls, but alſo the Pretors and Cenſors (two great Offices, ordained only for the eaſe of the Conſuls, from whom an Appeal lay to the Conſuls) did in many things exerciſe an arbitrary or legiſlative Power in the Abſence of the Conſuls, they had no Laws to limit them: for many Years after the Creation of Conſuls, ten men were ſent into *Greece* to chooſe Laws; and after the 12 Tables were confirmed, whatſoever the Pretors, who were but the Conſuls Subſtitutes, did

command, was called *jus honorarium*; and they were wont at the Entrance into their Office to collect, and hang up for publick View, a Form of Adminiſtration of Juſtice which they would obſerve, and though the *edictum Prætoris*, expired with the Pretors Office; yet it was called *Edictum perpetuum.*

What Peace the Low-Countries have found ſince their Revolt is viſible; it is near about an hundred Years ſince they ſet up for themſelves, of all which time only twelve years they had a Truce with the Spaniard, yet in the next year, after the Truce was agreed upon, the War of *Juliers* brake forth, which engaged both Parties; ſo that upon the matter, they have lived in a continued War, for almoſt 100 Years: had it not been for the Aid of their Neighbours, they had been long ago ſwallowed up, when they were glad humbly to offer their new hatch'd Commonweal, and themſelves Vaſſals to the Queen of *England*, after that the French King *Hen.* 3. had refuſed to accept them as his Subjects; That little Truce they had, was almoſt as coſtly as a War; they being forced to keep about thirty thouſand Souldiers continually in Garriſon. Two things they ſay they firſt fought about, Religion and Taxes; and they have prevailed it ſeems in both, for they have gotten all the Religions in Chriſtendome, and pay the greateſt Taxes in the World; they pay Tribute half in half for Food, and moſt neceſſary things, paying as much for Tribute as the price of the thing ſold; Exciſe is paid by all Retailers of Wine, and other Commodities; for each Tun of Beer ſix Shillings, for each Cow for the Pail two Stivers every week: for Oxen, Horſes, Sheep, and other beaſts ſold in the Market

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the twelfth part at leaſt, be they never ſo oft ſold by the year to and fro, the new Maſter ſtill pays as much: they pay five Stivers for every Buſhel of their own Wheat, which they uſe to grinde in publick Mills: Theſe are the Fruits of the Low-Country War.

It will be ſaid that *Venice* is a Commonwealth that enjoys Peace. She indeed of all other States hath enjoyed of late the greateſt Peace; but ſhe owes it not to her kind of Government, but to the natural Situation of the City, having ſuch a Banck in the Sea of neer threeſcore Miles, and ſuch Marſhes towards the Land, as make her unapproachable by Land, or Sea; to theſe ſhe is indebted for her Peace at home, and what Peace ſhe hath abroad ſhe buys at a dear Rate; and yet her Peace is little better than a continued War; The City always is in ſuch perpetual Fears, that many beſieged Cities are in more Security; a Senator or Gentleman dares not converſe with any Stranger in *Venice*, ſhuns Acquaintance, or dares not own it: they are no better than Banditos to all humane Society. Nay, no People in the World live in ſuch Jealouſie one of another; hence are their intricate Solemnities, or rather Lotteries in Election of their Magiſtrates, which in any other Place, would be ridiculous and uſeleſs. The Senators or Gentlemen are not only jealous of the Common People, whom they keep diſarmed, but of one another; they dare not truſt any of their own Citizens to be a Leader of their Army, but are forced to hire, and entertain Foreign Princes for their Generals, excepting their Citizens from their Wars, and hiring others in their Places; it cannot be ſaid, that People live

in Peace which are in ſuch miſerable Fears continually.

The *Venetians* at firſt were ſubject to the *Roman* Emperour; and for fear of the Invaſion of the *Hunnes* forſook *Padua*, and other places in *Italy*; and retired with all their Subſtance to thoſe Iſlands where now *Venice* ſtands: I do not read they had any Leave to deſert the defence of their Prince and Countrey, where they had got their Wealth, much leſs to ſet up a Government of their own; it was no better than a Rebellion, or Revolting from the *Roman* Empire. At firſt they lived under a kind of *Oligarchy*; for ſeveral Iſlands had each a Tribune, who all met, and governed in common: but the dangerous Seditions of their Tribunes, put a neceſſity upon them to chooſe a Duke for Life, who, for many hundreds of years, had an Abſolute Power; under whoſe Government *Venice* flouriſhed moſt, and got great Victories, and rich Poſſeſſions. But by inſenſible degrees, the Great Councel of the Gentlemen have for many years been leſſening the Power of their Dukes, and have at laſt quite taken it away. It is a ſtrange Errour for any man to believe, that the Government of *Venice* hath been alwayes the ſame that it is now: he that reads but the Hiſtory of *Venice*, may find for a long time a Sovereign Power in their Dukes: and that for theſe laſt two hundred years, ſince the diminiſhing of that Power, there hath been no great Victories and Conqueſts obtained by that Eſtate.

That which exceeds admiration is, that *Contarene* hath the confidence to affirm the preſent Government of *Venice* to be a mixed Form of *Monarchy*, *Democratie*, and *Ariſtocratie*: For, whereas he makes

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the Duke to have the Perſon and Shew of a King; he after confeſſeth, that the Duke can do nothing at all alone, and being joyned with other Magiſtrates, he hath no more Authority than any of them: alſo the power of the Magiſtrates is ſo ſmall, that no one of them, how great ſoever he be, can determine of any thing of moment, without the allowance of the Councel. So that this Duke is but a man dreſſed up in Purple, a King only in Pomp and Ornament, in Power but a Senator, within the City a Captive, without a Traytor, if he go without Leave. As little reaſon is there to think a Popular Eſtate is to be found in the great Councel of *Venice*, or *S. P. Q. V.* for it doth not conſiſt of the fortieth part of the People, but only of thoſe they call Patritians or Gentlemen; for the Commons, neither by themſelves, nor by any choſen by them for their Repreſentors, are admitted to be any part of the Great Councel: and if the Gentlemen of *Venice* have any Right to keep the Government in their own hands, and to exclude the Commons, they never had it given them by the People, but at firſt were beholding to *Monarchy* for their Nobility. This may further be noted, that though *Venice* of late enjoyed Peace abroad, yet it had been with that Charge, either for Fortification and Defence, or in Bribery ſo exceſſive, whereby of late upon any terms they purchaſed their Peace, that it is ſaid their Taxes are ſuch, that Chriſtians generally live better under the *Turk*, than under the *Venetians*, for there is not a grain of Corn, a ſpoonful of Wine, Salt, Eggs, Birds, Beaſts, Fowl, or Fiſh ſold, that payeth not a certain Cuſtom: upon occaſions the Labourers and Crafts-men pay a Rate by the Poll monthly,

they receive incredible Gains by Uſury of the Jews; for in every City they keep open Shops of Intereſt, taking pawns after fifteen in the hundred, and if at the years end it be not redeemed, it is forfeited, or at the leaſt, ſold at great loſs. The Revenues which the very Courtizans pay for Toleration, maintains no leſs than a dozen of Gallies.

By what hath been ſaid, it may be judged how unagreeable the popular Government of *Rome* heretofore, and of *Venice*, and the *United Provinces* at preſent, are, either for Religion or Peace (which two are principal ingredients of Government) and ſo conſequently not fit to be reckoned for Forms, ſince whatſoever is either good or tolerable in either of their Governments, is borrowed or patched up of a broken, and diſtracted *Monarchy*. Laſtly, though *Venice* and the *Low Countreys* are the only remarkable places in this age that reject *Monarchy*; yet neither of them pretend their Government to be founded upon any original Right of the People, or have the Common people any power amongſt them, or any choſen by them. Never was any popular Eſtate in the World famous for keeping themſelves in peace; all their glory hath been for Quarrelling and Fighting.

Thoſe that are willing to be perſwaded, that the power of Government is originally in the People, finding how impoſſible it is for any people to exerciſe ſuch power, do ſurmiſe, that though the people cannot govern, yet they may chooſe Repreſentors or Truſtees, that may manage this power for the People, and ſuch Repreſentors muſt be ſurmiſed to be the People. And ſince ſuch Repreſentors cannot

not truly be choſen by the People, they are fain to divide the People into ſeveral parts, as of Provinces, Cities, and Burrough-Towns, and to allow to every one of thoſe parts to chooſe one Repreſentor or more of their own: and ſuch Repreſentors, though not any of them be choſen by the whole, or major part of the People, yet ſtill muſt be ſurmiſed to be the People; nay, though not one of them be choſen either by the People, or the major part of the People of any Province, City, or Burrough, for which they ſerve, but onely a ſmaller part, ſtill it muſt be ſaid to be the People. Now when ſuch Repreſentors of the People do Aſſemble or meet, it is never ſeen that all of them can at one time meet together; and ſo there never appears a true, or full Repreſentation of the whole People of the Nation, the Repreſentors of one part or other being abſent, but ſtill they muſt be imagined to be the People. And when ſuch imperfect Aſſemblies be met, though not half be preſent, they proceed: and though their number be never ſo ſmall, yet it is ſo big, that in the debate of any Buſineſs of moment, they know not how to handle it, without referring it to a fewer number than themſelves, though themſelves are not ſo many as they ſhould be. Thus thoſe that are choſen to repreſent the People, are neceſſitated to chooſe others, to repreſent the Repreſentors themſelves; a Truſtee of the North doth delegate his power to a Truſtee of the South; and one of the Eaſt may ſubſtitute one of the Weſt for his Proxy: hereby it comes to paſs, that Publick Debates which are imagined to be referred to a general Aſſembly of a Kingdom, are contracted into a particular or private Aſſembly,

Aſſembly, than which nothing can be more deſtructive, or contrary to the nature of Publick Aſſemblies. Each company of ſuch Truſtees hath a Prolocutor, or Speaker; who, by the help of three or four of his fellows that are moſt active, may eaſily comply in gratifying one the other, ſo that each of them in their turns may ſway the Truſtees, whilſt one man, for himſelf or his friend, may rule in one Buſineſs, and another man for himſelf or his friend prevail in another cauſe, till ſuch a number of Truſtees be reduced to ſo many petty Monarchs as there be men of it. So in all Popularities, where a General Councel, or great Aſſembly of the People meet, they find it impoſſible to diſpatch any great Action, either with Expedition or Secrecy, if a publick free Debate be admitted; and therefore are conſtrained to Epitomize, and ſub-epitomiſe themſelves ſo long, till at laſt they crumble away into the Atomes of *Monarchy*, which is the next degree to *Anarchy*; for *Anarchy* is nothing elſe but a broken *Monarchy*, where every man is his own *Monarch*, or Governour.

Whereas the Power of the People in chooſing both their Government and Governours, is of late highly magnified, as if they were able to chooſe the beſt and excellenteſt men for that purpoſe. We ſhall find it true what *Ariſtotle* hath affirmed, that *to chooſe well is the office of him that hath Knowledge*; *none can chooſe a* Geometrician *but he that hath skill in* Geometry, l. 3. c. 11. for, ſaith he, *All men eſteem not Excellency to be one and the ſame*, l. 3. c. 17.

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A great deal of talk there is in the World of the Freedom and Liberty that they ſay is to be found in Popular Commonweals; it is worth the enquiry how far, and in what ſenſe this Speech of Liberty is true. *True Liberty is for every man to do what he liſt, or to live as he pleaſe, and not to be tied to any Laws.* But ſuch Liberty is not to be found in any Commonweal; for there are more Laws in Popular Eſtates than any where elſe; and ſo conſequently leſs Liberty: and Government many ſay was invented to take away Liberty, and not to give it to every man; ſuch Liberty cannot be; if it ſhould, there would be no Government at all: therefore *Ariſtotle*, l. 6. cap. 4. *It is profitable not to be lawful to do every thing that we will, for power to do what one will, cannot reſtrain that Evil that is in every man*; ſo that true Liberty cannot, nor ſhould not be in any Eſtate. But the onely Liberty that the talkers of Liberty can mean, is a Liberty for ſome men to *Rule and to be Ruled*, for ſo *Ariſtotle* expounds it; one while to Govern, another while to be Governed; to be a King in the forenoon, and a Subject in the afternoon; this is the onely Liberty that a Popular Eſtate can brag of, that where a *Monarchy* hath but one King, their Government hath the liberty to have many Kings by turns. If the Common People look for any other Liberty, either of their Perſons or their Purſes, they are pitifully deceived, for a perpetual Army and Taxes are the principal materials of all Popular Regiments: never yet any ſtood without them, and very ſeldom continued with them; many popular Eſtates have ſtarted up, but few have laſted; *It is no hard matter for any kind of Government to laſt one, or two, or three*

*three dayes*, l. 6. c. 5. For all ſuch as out of hope of Liberty, attempt to erect new Forms of Government, he gives this prudent Leſſon. *We muſt look well into the continuance of Time, and remembrance of many Years, wherein the means tending to eſtabliſh Community had not lain hid, if they had been good and uſeful; for almoſt all things have been found out, albeit ſome have not been received, and other ſome have been rejected, after men have had experience of them*; l. 2. c. 5.

It is believed by many, that at the very firſt Aſſembling of the People, it was unanimouſly agreed in the firſt place, that the Conſent of the major part ſhould bind the whole; and that though this firſt Agreement cannot poſſibly be proved, either how, or by whom it ſhould be made; yet it muſt neceſſarily be believed or ſuppoſed, becauſe otherwiſe there could be no lawful Government at all. That there could be no lawful Government, except a general Conſent of the whole People be firſt ſurmiſed, is no ſound propoſition; yet true it is, that there could be no popular Government without it. But if there were at firſt a Government without being beholden to the People for their Conſent, as all men confeſs there was, I find no reaſon but that there may be ſo ſtill, without asking Leave of the Multitude.

If it be true, that men are by nature free-born, and not to be governed without their own Conſents, and that Self-preſervation is to be regarded in the firſt place, it is not lawful for any Government but *Self-government* to be in the World, it were ſin in the People to Deſire, or attempt to Conſent to any other Government: if the Fa-

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thers will promiſe for themſelves to be Slaves, yet for their Children they cannot, who have alwayes the ſame Right to ſet themſelves at Liberty, which their Fathers had to Enſlave themſelves.

To pretend that a major part, or the ſilent Conſent of any part, may be interpreted to bind the whole People, is both unreaſonable and unnatural; it is againſt all Reaſon for men to bind others, where it is againſt Nature for men to bind themſelves. Men that boaſt ſo much of natural Feeedom, are not willing to conſider how contradictory and deſtructive the Power of a major part is to the natural Liberty of the whole People; the two grand Favourites of the Subjects, *Liberty* and *Property* (for which moſt men pretend to ſtrive) are as contrary as Fire to Water, and cannot ſtand together. Though by humane Laws in *Voluntary Actions*, a major part may be tolerated to bind the whole Multitude, yet in *Neceſſary Actions*, ſuch as thoſe of Nature are, it cannot be ſo. Beſides, if it were poſſible for a whole People to chooſe their Repreſentors, then either every, each one of thoſe Repreſentors ought to be particularly choſen by the whole People, and not one Repreſentor by one part, and another Repreſentor by another part of the People, or elſe it is neceſſary, that continually the entire Number of the Repreſentors be preſent, becauſe otherwiſe the whole People is never repreſented.

Again, it is impoſſible for the People, though they might and would chooſe a Government, or Governours, ever to be able to do it: for the People, to ſpeak truly and properly, is a thing or Body in

in continual Alteration and Change, it never continues one Minute the ſame, being compoſed of a Multitude of Parts, whereof divers continually decay and periſh, and others renew and ſucceed in their places; they which are the People this Minute, are not the People the next Minute. If it be anſwered, that it is impoſſible to ſtand ſo ſtrictly, as to have the Conſent of the whole People; and therefore that which cannot be, muſt be ſuppoſed to be the Act of the whole People: This is a ſtrange Anſwer, firſt to affirm a Neceſſity of having the Peoples Conſent, than to confeſs an Impoſſibility of having it. If but once that Liberty, which is eſteemed ſo ſacred, be broken, or taken away but from one of the meaneſt or baſeſt of all the People; a wide Gap is thereby opened for any Multitude whatſoever, that is able to call themſelves, or whomſoever they pleaſe, the People.

Howſoever men are naturally willing to be perſwaded, that all Sovereignty flows from the Conſent of the People, and that without it no true Title can be made to any Supremacy; and that it is ſo *currant an Axiome of late, that it will certainly paſs without Contradiction* as a late *Exercitator* tells us: yet there are *many and great Difficulties* in the Point never yet determined, not ſo much as diſputed, all which the *Exercitator* waves and declines, profeſſing he will not inſiſt upon the Diſtinctions, touching *the manner of the Peoples paſſing their Conſent, nor determine which of them is ſufficient, and which not to make the Right or Title; whether it muſt be Antecedent to Poſſeſſion, or may be conſequent: Expreſs, or Tacite: Collective, or Repreſentative: Abſolute, or conditionated: Free, or Inforced: Revocable, or Irrevo-*

*revocable.* All theſe are material Doubts concerning the Peoples Title, and though the *Exercitator* will not himſelf determine what Conſent is ſufficient, and what not, to make a Right or Title, yet he might have been ſo courteous, as to have directed us, to whom we might go for Reſolution in theſe Caſes. But the Truth is, that amongſt all them that plead the Neceſſity of the Conſent of the People, not one of them hath ever toucht upon theſe ſo neceſſary Doctrines; it is a Task it ſeems too difficult, otherwiſe ſurely it would not have been neglected, conſidering how neceſſary it is to reſolve the Conſcience, touching the manner of the Peoples paſſing their Conſent; and what is ſufficient, and what not, to make, or derive a Right, or Title from the People.

No Multitude or great Aſſembly of any Nation, though they be all of them never ſo good and vertuous, can poſſibly govern; this may be evidently diſcovered by conſidering the Actions of great and numerous Aſſemblies, how they are neceſſitated to relinquiſh that ſupreme Power, which they think they exerciſe, and to delegate it to a few. There are two Parts of the Supreme Power, the *legiſlative*, and the *Executive*, neither of theſe can a great Aſſembly truly act. If a new Law be to be made it may in the General receive the Propoſal of it from one or more of the General Aſſembly, but the forming, penning, or framing it into a Law is committed to a few, becauſe a great number of perſons cannot without tedious, and dilatory Debates, examine the Benefits and Miſchiefs of a Law. Thus in the very firſt Beginning the Intention of a general Aſſembly is fruſtrated; then after a Law is pen-

penned or framed, when it comes to be queſtioned, whether it ſhall paſs or nay; though it be Voted in a full Aſſembly, yet by the Rules of the Aſſembly, they are all ſo tyed up, and barred from a free and full Debate; that when any man hath given the Reaſons of his Opinion; if thoſe Reaſons be argued againſt, he is not permitted to reply in Juſtification or Explanation of them, but when he hath once ſpoken, he muſt be heard no more: which is a main Denial of that Freedome of Debate, for which the great Aſſembly is alleaged to be ordained in the high Point of *Legiſlative* Power.

The ſame may be ſaid, touching the *executive* Power; if a cauſe be brought before a great Aſſembly, the firſt thing done, is to referr, or commit it to ſome few of the Aſſembly, who are truſted with the examining the Proofs, and Witneſſes, and to make Report to the general Aſſembly; who upon the Report proceed to give their Judgments without any publick hearing, or interrogating the Witneſſes, upon whoſe Teſtimonies diligently examined every man that will paſs a conſcientious judgment is to rely. Thus the *legiſlative* and *executive* Power are never truly practiſed in a great Aſſembly; the true Reaſon whereof is, if Freedom be given to Debate, never any thing could be agreed upon without endleſs Diſputes; meer Neceſſity compels to refer main Tranſactions of Buſineſs to particular Congregations and Committees.

Thoſe Governments that ſeem to be popular are kinds of petty *Monarchies*, which may thus appear: Government is a Relation between the Governours, and the governed, the one cannot be with-

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out the other, *mutuò ſe ponunt & auferunt*; where a Command or Law proceeds from a major part, there thoſe individual Perſons that concurred in the Vote, are the Governours, becauſe the Law is only their Will in particular: the Power of a major Part being a contingent, or caſual thing, expires in the very Act it ſelf of voting, which Power of a major part is grounded upon a Suppoſition, that they are the ſtronger part; when the Vote is paſt, theſe Voters, which are the major part, return again, and are incorporated into the whole Aſſembly, and are buried as it were in that Lump, and no otherwiſe conſidered; the Act or Law ordained by ſuch a Vote, loſeth the Makers of it, before it comes to be obeyed; for when it comes to be put in Execution, it becomes the Will of thoſe who enjoyn it, and force Obedience to it, not by Virtue of any Power derived from the Makers of the Law. No man can ſay, that during the Reign of the late Queen *Elizabeth*, that King *Henry* the 8*th*. or *Edward* the ſixth did govern, although that many of the Laws that were made in thoſe two former Princes times, were obſerved, and executed under her Government; but thoſe Laws, though made by her Predeceſſours, yet became the Laws of her preſent Government; who willed and commanded the Execution of them, and had the ſame Power to correct, interpret, or mitigate them, which the firſt makers of them had; every Law muſt always have ſome preſent known Perſon in Being, whoſe Will it muſt be to make it a Law for the Preſent; this cannot be ſaid of the major part of any Aſſembly, becauſe that major part inſtantly ceaſeth, as

ſoon as ever it hath voted: an infallible Argument whereof is this, that the ſame major part after the Vote given, hath no Power to correct, alter, or mitigate it, or to Cauſe it to be put in Execution; ſo that he that ſhall act, or cauſe that Law to be executed, makes himſelf the Commander, or willer of it, which was originally the Will of others: It is ſaid by Mr. *Hobs* in his *Leviathan* page 141. *nothing is Law, where the Legiſlator cannot be known; for there muſt be manifeſt Signs, that it proceedeth from the Will of the Sovereign; there is requiſite, not only a Declaration of the Law, but alſo ſufficient Signs of the Author and the Authority.*

That Senate or great Councel, wherein it is conceived the ſupreme, or legiſlative Power doth reſt, conſiſts of thoſe Perſons who are actually Subjects at the very ſame time, wherein they exerciſe their legiſlative Power, and at the ſame Inſtant may be guilty of breaking one Law, whileſt they are making another Law; for it is not the whole and entire Will of every particular Perſon in the Aſſembly, but that part onely of his Will, which accidentally falls out to concurr with the Will of the greater part: So that the Sharers of the legiſlative Power have each of them, perhaps not a hundreth part of the legiſlative Power (which in it ſelf is indiviſible) and that not in *Act*, but in *Poſſibility*, only in one particular Point for that Moment, whilſt they give their Vote. To cloſe this Point which may ſeem ſtrange and new to ſome, I will produce the Judgment of *Bodin*, in his ſixth Book of a Commonweal, and the fourth Chapter; his words are, *The chief Point of a Commonweal, which is the Right of Sovereignty, cannot be, nor inſiſt, to ſpeak properly, but*

*but in Monarchy; for none can be Sovereign in a Commonweal, but one alone; if they be two or three or more, no one is Sovereign, for that no one of them can give or take a Law from his Companion: and although we imagine a Body of many Lords, or of a whole People to hold the Sovereignty, yet hath it no true Ground nor Support, if there be not a Head with abſolute Power to unite them together, which a ſimple Magiſtrate without Sovereign Authority cannot do. And if it chance that the Lords, or Tribes of the People be divided (as it often falls out) then muſt they fall to Arms one againſt another: and although the greateſt part be of one Opinion, yet may it ſo happen, as the leſſer part, having many Legions, and making a Head, may oppoſe it ſelf againſt the greater Number, and get the Victory. We ſee the Difficulties which are, and always have been in popular Eſtates, whereas they hold contrary Parts and for divers Magiſtrates, ſome demand Peace, others War; ſome will have this Law, others that; ſome will have one Commander, others another; ſome will treat a League with the King of* France, *others with the King of* Spain, *corrupted or drawn, ſome one Way, ſome another, making open War, as hath been ſeen in our Age amongſt the Griſons &c.*

Upon theſe Texts of *Ariſtotle* forecited, and from the Mutability of the *Roman* Popularity, which *Ariſtotle* lived not to ſee, I leave the Learned to conſider, whether it be not probable that theſe, or the like Parodoxes may be inferred to be the plain Mind of *Ariſtotle*, viz. 1. *That there is no Form of Government, but Monarchy only.* 2. *That there is no Monarchy, but Pa-*

*ternal.* 3. *That there is no Paternal Monarchy, but Abſolute, or Arbitrary.* 4. *That there is no ſuch thing as an Ariſtocratie or Democratie.* 5. *That there is no ſuch Form of Government as a Tyranny.* 6. *That the People are not born Free by Nature.*

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# DIRECTIONS

FOR

## Obedience to Government

IN

Dangerous or Doubtful Times.

ALL thoſe who ſo eagerly ſtrive for an original Power to be in the People, do with one Conſent acknowledge, that originally the Supreme Power was in the Fatherhood; and that the firſt Kings were Fathers of Families: This is not only evident, and affirmed by *Ariſtotle*; but yielded unto by *Grotius*, Mr. *Selden*, Mr. *Hobbs*, Mr. *Aſcam*; and all others of that Party, not one excepted, that I know of.

Now for thoſe that confeſs an original Subjection in Children, to be governed by their Parents, to dream of an original Free-

dom in Mankind, is to contradict themſelves; and to make Subjects to be Free, and Kings to be Limited; to imagine ſuch Pactions and Contracts between Kings and People, as cannot be proved ever to have been made, or can ever be deſcribed or fancied, how it is poſſible for ſuch Contracts ever to have been, is a boldneſs to be wondred at.

Mr. *Selden* confeſſeth, that *Adam, by donation from God, was made the general Lord of all things, not without ſuch a private Dominion to himſelf, as (without his Grant) did exclude his Children. And by Donation, or Aſſignation, or ſome kind of Conceſſion (before he was dead, or left any Heir to ſucceed him) his Children had their diſtinct Territories, by Right of Private Dominion.* Abel *had his Flocks, and Paſtures for them:* Cain *had his Fields for Corn, and the Land of* Nod, *where he built himſelf a City.*

It is confeſſed, that in the Infancy of the World, the Paternal Government was Monarchical; but when the World was repleniſhed with multitude of people, then the Paternal Government ceaſed, and was loſt; and an Elective kind of Government by the People, was brought into the World. To this it may be anſwered, That the paternal Power cannot be loſt; it may either

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be *transferr'd* or uſurped; but never loſt, or ceaſeth. God, who is the giver of Power, may transferr it from the Father to ſome other; he gave to *Saul* a Fatherly power over his Father *Kiſh.* God alſo hath given to the Father a Right or Liberty to alien his Power over his Children, to any other; whence we find the Sale and gift of Children, to have been much in Uſe in the beginning of the World, when men had their Servants for a poſſeſſion and an Inheritance as well as other Goods: whereupon we find the power of Caſtrating, and making Eunuchs much in Uſe in old times. As the power of the Father may be lawfully transferr'd or aliened, ſo it may be unjuſtly uſurped: And in Uſurpation, the Title of an Uſurper is before, and better than the Title of any other than of him that had a former Right: for he hath a poſſeſſion by the permiſſive Will of God, which permiſſion, how long it may endure, no man ordinarily knows. Every man is to preſerve his own Life for the Service of God, and of his King or Father, and is ſo far to obey an Uſurper, as may tend not only to the preſervation of his King and Father, but ſometimes even to the preſervation of the Uſurper himſelf, when probably he may thereby be reſerved to the Cor-

rection, or Mercy of his true Superiour; though by Humane Laws, a long Preſcription may take away Right, yet Divine Right never dies, nor can be loſt, or taken away.

Every man that is born, is ſo far from being Free-born, that by his very Birth he becomes a Subject to him that begets him: under which Subjection he is always to live, unleſs by immediate Appointment from God, or by the Grant or Death of his Father, he become poſſeſſed of that power to which he was ſubject.

The Right of Fatherly Government was ordained by God, for the preſervation of Mankind; if it be uſurped, the Uſurper may be ſo far obeyed, as may tend to the preſervation of the Subjects, who may thereby be enabled to perform their Duty to their true and right Sovereign, when time ſhall ſerve: in ſuch Caſes to obey an Uſurper, is properly to obey the firſt and right Governour, who muſt be preſumed to deſire the Safety of his Subjects: the Command of an Uſurper is not to be obeyed in any thing tending to the deſtruction of the Perſon of the Governour, whoſe Being in the firſt place is to be looked after.

It hath been ſaid, that there have been

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ſo many Uſurpations by Conqueſt in all Kingdoms, that all Kings are Uſurpers, or the Heirs or Succeſſors of Uſurpers; and therefore any Uſurper, if he can but get the poſſeſſion of a Kingdom, hath as good a Title as any other.

*Anſwer.* The firſt Uſurper hath the beſt Title, being, as was ſaid, in poſſeſſion by the Permiſſion of God; and where an Uſurper hath continued ſo long, that the knowledge of the right Heir be loſt by all the Subjects, in ſuch a caſe an Uſurper in poſſeſſion is to be taken and reputed by ſuch Subjects for the true Heir, and is to be obeyed by them as their Father. As no man hath an infallible Certitude, but onely a moral Knowledge, which is no other than a probable perſwaſion grounded upon a peaceable poſſeſſion, which is a warrant for ſubjection to Parents and Governours; for we may not ſay, becauſe Children have no infallible, or neceſſary certainty who are their true Parents, that therefore they need not obey, becauſe they are uncertain: it is ſufficient, and as much as Humane Nature is capable of, for Children to rely upon a credible perſwaſion; for otherwiſe the Commandement of *Honour thy Father*, would be a vain Commandment, and not poſſible to be obſerved.

By

By Humane poſitive Laws, a Poſſeſſion time out of mind takes away, or barrs a former Right, to avoid a general Miſchief, of bringing all Right into a diſputation not decideable by proof, and conſequently to the overthrow of all Civil Government, in Grants, Gifts, and Contracts, between man and man: But in Grants and Gifts that have their original from God or Nature, as the Power of the Father hath, no Inferiour power of man can limit, nor make any Law of Preſcription againſt them: upon this ground is built that common Maxim, that *Nullum tempus occurrit regi*, No time bars a King.

All Power on Earth is either *derived* or *uſurped* from the Fatherly power, there being no other original to be found of any Power whatſoever; for if there ſhould be granted two ſorts of power without any ſubordination of one to the other, they would be in perpetual ſtrife which ſhould be Supreme, for two Supremes cannot agree; if the Fatherly power be ſupreme, then the power of the People muſt be ſubordinate, and depend on it; if the power of the People be ſupreme, then the Fatherly power muſt ſubmit to it, and cannot be exerciſed without the Licence of the People, which muſt quite deſtroy the frame and

and courſe of Nature. Even the Power which God himſelf exerciſeth over Mankind is by Right of Fatherhood; he is both the King and Father of us all; as God hath exalted the Dignity of Earthly Kings, by communicating to them his own Title, by ſaying *they are gods*; ſo on the other ſide, he hath been pleaſed as it were to humble himſelf, by aſſuming the Title of a King, to expreſs his Power, and not the Title of any popular Government; we find it is a puniſhment to have *no King*, Hoſea, *ch.* 3. 4. and promiſed, as a Bleſſing to *Abraham*, Gen. 17. 6. *that Kings ſhall come out of thee.*

Every man hath a part or ſhare in the preſervation of Mankind in general, he that uſurps the Power of a Superiour, thereby puts upon himſelf a Neceſſity of acting the Duty of a Superiour in the Preſervation of them over whom he hath uſurped, unleſs he will aggravate one heinous Crime, by committing another more horrid; he that takes upon him the Power of a ſuperiour ſins ſufficiently, and to the Purpoſe: but he that proceeds to deſtroy both his Superiour, and thoſe under the Superiours Protection, goeth a Strain higher, by adding Murther to Robbery; if Government be hindered, mankind periſheth, an Uſurper

Uſurper by hindering the Government of another, brings a Neceſſity upon himſelf to govern, his Duty before Uſurpation was only to be miniſterial, or inſtrumental in the preſervation of others by his Obedience; but when he denies his own, and hinders the Obedience of others, he doth not only not help, but is the Cauſe of the Diſtraction in hindering his Superiour to perform his Duty, he makes the Duty his own: if a Superiour cannot protect, it is his part to deſire to be able to do it, which he cannot do in the Future if in the preſent they be deſtroyed for want of Government: therefore it is to be preſumed, that the Superiour deſires the preſervation of them that ſhould be ſubject to him; and ſo likewiſe it may be preſumed, that an Uſurper in general doth the Will of his Superiour, by preſerving the People by Government, and it is not improper to ſay, that in obeying an Uſurper, we may obey primarily the true Superiour, ſo long as our Obedience aims at the preſervation of thoſe in Subjection, and not at the Deſtruction of the true Governour. Not only the Uſurper, but thoſe alſo over whom Power is uſurped, may joyn in the preſervation of themſelves, yea, and in the preſervation ſometimes of the Uſurper himſelf.

Thus

Thus there may be a conditional Duty, or Right in an Uſurper to govern; that is to ſay, ſuppoſing him to be ſo wicked as to uſurp, and not willing to ſurrender or forego his Uſurpation, he is then bound to protect by Government, or elſe he encreaſeth, and multiplyeth his Sin.

Though an Uſurper can never gain a Right from the true Superiour, yet from thoſe that are Subjects he may; for if they know no other that hath a better Title than the Uſurper, then as to them the Uſurper in Poſſeſſion hath a true Right.

Such a qualified Right is found at firſt in all Uſurpers, as is in Theives who have ſtolen Goods, and during the time they are poſſeſſed of them, have a Title in Law againſt all others but the true Owners, and ſuch Uſurpers to divers Intents and Purpoſes may be obeyed.

Neither is he only an Uſurper who obtains the Government, but all they are Partakers in the Uſurpation, who have either failed to give Aſſiſtance to their lawful Sovereign, or have given Aid either by their Perſons, Eſtates or Counſels for the Deſtroying of that Governour, under whoſe Protection they have been born and preſerved; for although it ſhould be granted, that *Protection* and *Subjection* are re-

reciprocal, ſo that where the firſt fails, the latter ceaſeth; yet it muſt be remembred, that where a man hath been born under the Protection of a long and peaceable Government, he owes an Aſſiſtance for the preſervation of that Government that hath protected him, and is the Author of his own Diſobedience.

It is ſaid by ſome, that an uſurped Power may be obeyed in things that are lawful: but it may not be obeyed not only in lawful things, but alſo in things indifferent: Obedience in things indifferent, is neceſſary; not indifferent. For in things neceſſarily good God is immediately obeyed, Superiours only by Conſequence: If men command things evil, Obedience is due only by *tolerating* what they inflict: not by *performing* what they require: in the firſt they declare what God commands to be *done*, in the latter what to be *ſuffered*, ſo it remains, that things indifferent only are the proper Object of humane Laws. Actions are to be conſidered *ſimply* and alone, and ſo are good as being Motions depending on the firſt Mover; or *jointly* with Circumſtances: And that in a double Manner. 1. In Regard of the *Ability* or *Poſſibility* whileſt they may be done. 2. In the *Act* when they be performed: Before they be done

done they be indifferent, but once breaking out into Act, they become diſtinctly Good or Evil according to the Circumſtances which determine the ſame. Now an Action commanded, is ſuppoſed as not yet done (whereupon the Hebrews call the Imperative Mood the firſt Future) and ſo remaineth many times indifferent.

Some may be of Opinion, that if Obedience may be given to an Uſurper in things indifferent, as well as to a lawful Power; that then there is as much Obedience due to an uſurped Power, as to a lawful. But it is a Miſtake; for though it be granted that in things indifferent, an Uſurper may be obeyed, as well as a lawful Governour; yet herein lyeth a main Difference, that ſome things are indifferent for a lawful Superiour, which are not indifferent, but unlawful to an Uſurper to enjoyn. Uſurpation is the reſiſting, and taking away the Power from him, who hath ſuch a former Right to govern the Uſurper, as cannot lawfully be taken away: ſo that it cannot be juſt for an Uſurper, to take Advantage of his own unlawful Act, or create himſelf a Title by continuation of his own Injuſtice, which aggravates, and never extenuates his Crime: and if it never can be an Act indifferent for the Uſurper himſelf to diſobey his Lawful

ful Sovereign, much leſs can it be indifferent for him to command another to do that to which he hath no Right himſelf. It is only then a matter indifferent for an Uſurper to command, when the Actions enjoyned are ſuch; as the lawful Superiour is commanded by the Law of God, to provide for the benefit of his Subjects, by the ſame, or other like Reſtriction of ſuch indifferent things; and it is to be preſumed, if he had not been hindred, would have commanded the ſame, or the like Laws.

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OBSER-

# OBSERVATIONS

Concerning the

# Original of Government,

Upon { *Mr.* HOBS *his Leviathan.*
*Mr.* MILTON againſt *Salmaſius.*
H. GROTIUS *De Jure Belli.*
*Mr.* HUNTON'S *Treatiſe of Monarchy.*

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Ariſt. Pol. *Lib.* 4.

Ἡ πρώτη πολιτεία ἐν τοῖς Ἕλλησιν ἐγένετο μετὰ τὰς βασιλείας ἃς τοὺς πολεμίους.

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# THE PREFACE

*WITH no ſmall Content I read Mr.* Hobs's *Book* De Cive, *and his* Leviathan, *about the Rights of Sovereignty, which no man, that I know, hath ſo amply and judiciouſly handled: I conſent with him about the Rights of* exerciſing *Government, but I cannot agree to his means of* acquiring *it. It may ſeem ſtrange I ſhould praiſe his Building, and yet miſlike his Foundation; but ſo it is, his* Jus Naturæ, *and his* Regnum Inſtitutivum, *will not down with me: they appear full of Contradiction and Impoſſibilities; a few ſhort Notes about them, I here offer, wiſhing he would conſider, whether his Building would not ſtand firmer upon the Principles of* Regnum Patrimoniale *(as he calls it) both according to* Scripture *and* Reaſon. *Since he confeſſeth, the* Father, being before the inſtitution of a Commonwealth, was Originally an Abſolute Sovereign, with power of Life

and Death, *and that* a great Family, as to the Rights of Sovereignty, is a little Monarchy. *If, according to the order of Nature, he had handled* Paternal Government *before that by* Inſtitution, *there would have been little liberty left in the Subjects of the Family to conſent to Inſtitution of Government.*

*In his pleading the Cauſe of the People, he arms them with a very large Commiſſion of* Array; *which is, a Right in Nature for every Man, to war againſt every Man when he pleaſe: and alſo a Right for all the People to govern. This latter Point, although he affirm in Words, yet by Conſequence he denies, as to me it ſeemeth.*

*He ſaith, a* Repreſentative *may be of* All, *or but of a* Part *of the People. If it be of* All, *he terms it a* Democratie, *which is the Government of the People. But how can ſuch a Commonwealth be generated? for if every man Covenant with every man, who ſhall be left to be the* Repreſentative? *if* All *muſt be* Repreſentatives, *who will remain to Covenant? for he that is Sovereign makes no Covenant by his Doctrine. It is not* All that will come together, *that makes the* Democratie, *but* All that have power *by Covenant; thus his* Democratie *by* Inſtitution *fails.*

*The ſame may be ſaid of a* Democratie by acquiſition; *for if all be* Conquerours, *who ſhall*

*ſhall Covenant for Life and Liberty? and if all be not Conquerours, how can it be a* Democratie *by Conqueſt?*

*A* Paternal Democratie *I am confident he will not affirm; ſo that in concluſion the poor People are deprived of their Government, if there can be no* Democratie, *by his Principles.*

*Next, If a* Repreſentative Ariſtocratical *of a Part of the People be free from Covenanting, then that whole Aſſembly (call it what you will) though it be never ſo great, is in the ſtate of Nature, and every one of that Aſſembly hath a Right not only to kill any of the Subjects that they meet with in the ſtreets, but alſo they all have a natural Right to cut one anothers throats, even while they ſit together in Councel, by his Principles. In this miſerable condition of War is his* Repreſentative Ariſtocratical *by Inſtitution.*

*A* Commonwealth by Conqueſt, *he teacheth, is then* acquired, *when the Vanquiſhed, to avoid preſent Death, Covenanteth, that ſo long as his Life, and the liberty of his Body is allowed him, the Victor ſhall have the Uſe of it at his pleaſure. Here I would know how the Liberty of the Vanquiſhed can be allowed, if the Victor have the Uſe of it at pleaſure, or how it is poſſible for the Victor to perform his Covenant, except he could alwayes ſtand by eve-*

*ry particular man to protect his Life and Liberty?*

*In his Review and Concluſion he reſolves, that an ordinary Subject hath liberty to ſubmit, when the means of his Life is within the Guards and Gariſons of the Enemy. It ſeems hereby that the Rights of Sovereignty by Inſtitution may be forfeited, for the Subject cannot be at liberty to ſubmit to a Conquerour, except his former Subjection be forfeited for want of Protection.*

*If his Conquerour be in the ſtate of nature when he conquers, he hath a Right without any Covenant made with the conquered: If Conqueſt be defined to be the* acquiring of Right of Sovereignty by Victory, *why is it ſaid,* the Right is acquired in the Peoples Submiſſion, by which they contract with the Victor, promiſing Obedience for Life and Liberty? *hath not every one in the ſtate of Nature a Right to Sovereignty before Conqueſt, which onely puts him in poſſeſſion of his Right?*

*If his Conquerour be not in the ſtate of Nature, but a Subject by Covenant, how can he get a Right of Sovereignty by Conqueſt, when neither he himſelf hath Right to Conquer, nor Subjects a liberty to Submit? ſince a former Contract lawfully made, cannot lawfully be broken by them.*

*I wiſh the Title of the Book had not been of a* Common-Wealth, *but of a* Weal Publick, *or* Common-weal, *which is the true word, Carefully obſerved by our Tranſlator of* Bodin de Republica *into Engliſh: Many ignorant men are apt by the Name of* Commonwealth *to underſtand a Popular Government, wherein* Wealth *and all things ſhall be* Common, *tending to the* Levelling Community *in the ſtate of pure Nature.*

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OBSER-

# OBSERVATIONS
## ON
# Mr. *HOBS's LEVIATHAN:*
## OR, HIS
## ARTIFICIAL MAN
## A Commonwealth.

I.

IF God created only *Adam*, and of a Piece of him made the Woman; and if by Generation from them two, as parts of them, all Mankind be propagated: If alſo God gave to *Adam* not only the Dominion over the Woman and the Children that ſhould iſſue from them, but alſo over the whole Earth to ſubdue it, and over all the Creatures on it, ſo that as long as *Adam* lived no man could claim or enjoy any thing but by Donation, Aſſignation, or Permiſſion from him; I wonder how the *Right of Nature* can be imagined by Mr. *Hobs*, which he ſaith *pag.* 64. is, *a Liberty for each man to uſe his own Power as he will himſelf for Preſervation of his own Life; a Condition of War of every one againſt every one; a Right of every man to every thing,*

*even*

*even to one anothers Body*, eſpecially ſince himſelf affirms, *pag.* 178. *that originally the Father of every man was alſo his Sovereign Lord, with Power over him of Life and Death.*

II

Mr. *Hobs* confeſſeth and believes *it was never generally ſo*, that there was ſuch a *jus naturæ*; and if not generally, then not at all, for one exception bars all if he mark it well; whereas he imagines ſuch a *Right of Nature* may be now practiſed in *America*, he confeſſeth a Government there of Families, which Government how *ſmall* or *brutiſh* ſoever (as he calls it) is ſufficient to deſtroy his *jus naturale*.

III.

I cannot underſtand how this *Right of Nature* can be conceived without imagining a Company of men at the very firſt to have been all Created together without any Dependency one of another, or as *Muſhroms (fungorum more) they all on a ſudden were ſprung out of the Earth without any Obligation one to another*, as Mr. *Hobs's* words are in his Book *De Cive*, *cap.* 8. *ſect.* 3. the Scripture teacheth us otherwiſe, that all men came by Succeſſion, and Generation from one man: we muſt not deny the Truth of the Hiſtory of the Creation.

IV.

It is not to be thought that God would create man in a Condition worſe than any Beaſts, as if he made men to no other End by Nature but to deſtroy one

one another; a Right for the Father to deſtroy or eat his Children, and for Children to do the like by their Parents, is worſe than Canibals. *De Cive, cap.* 1. This horrid Condition of pure Nature *ſect.* 10. when Mr. *Hobs* was charged with, his Refuge was to anſwer, *that no Son can be underſtood to be in this ſtate of pure Nature*: which is all one with denying his own Principle, for if men be not free-born, it is not poſſible for him to aſſign and prove any other time for them to claim a Right of Nature to Liberty, if not at their Birth.

## V.

But if it be allowed (which is yet moſt falſe) that a Company of men were at firſt without a common Power to keep them in Awe; I do not ſee why ſuch a Condition muſt be called *a State of War of all men againſt all men*: indeed if ſuch a Multitude of men ſhould be created as the Earth could not well nouriſh, there might be Cauſe for men to deſtroy one another rather than periſh for want of Food; but God was no ſuch Niggard in the Creation, and there being Plenty of Suſtenance and Room for all men, there is no Cauſe or Uſe of War till men be hindred in the Preſervation of Life, ſo that there is no abſolute Neceſſity of War in the State of pure Nature, it is the Right of Nature for every man to live in Peace, that ſo he may tend the Preſervation of his life, which whilſt he is in actual War he cannot do. War of it ſelf as it is War preſerves no mans Life, it only helps us to preſerve and obtain the Means to live: if every man tend the Right of preſerving Life, which may

may be done in Peace, there is no Cauſe of War.

VI.

But admit the State of Nature were the State of War; let us ſee what Help Mr. *Hobs* hath for it. It is a Principle of his, that *the Law of Nature is a Rule found out by Reaſon*, (I do think it is given by God) *pag.* 64. *forbidding a man to do that which is deſtructive to his Life, and to omit that by which he thinks it may be beſt preſerved*: If the Right of Nature be a Liberty for a man to do any thing he thinks fit to preſerve his Life, then in the firſt Place Nature muſt teach him that Life is to be preſerved, and ſo conſequently forbids to do that which may deſtroy or take away the means of life, or to omit that by which it may be preſerved: and thus the *Right of Nature* and *the Law of Nature* will be all one: for I think Mr. *Hobs* will not ſay the Right of Nature is a Liberty for man to deſtroy his own Life. The Law of Nature might better have been ſaid to conſiſt in a Command to preſerve or not to omit the Means of preſerving Life, than in a Prohibition to deſtroy, or to omit it.

VII.

Another Principle I meet with, *pag.* 65. *If other men will not lay down their Right as well as he, then there is no Reaſon for any to deveſt himſelf of his*: Hence it follows, that if all the men in the World do not agree, no Common-wealth can be eſtabliſhed; it is a thing impoſſible for all the men in the World, every man with every man, to Covenant to lay down their Right. Nay it is not poſſible to be

be done in the ſmalleſt Kingdom, though all men ſhould ſpend their whole Lives in nothing elſe but in running up and down to Covenant.

## VIII.

Right may be laid aſide but not transfer'd, for pag. 65. *he that renounceth or paſſeth away his Right, giveth not to any other man a Right which he had not before, and reſerves a Right in himſelf againſt all thoſe with whom he doth not Covenant.*

## IX.

Pag. 87. *The only way to erect a Common Power or a Commonwealth; is for men to confer all their Power and Strength upon one man, or one Aſſembly of men, that may reduce all their Wills by Plurality of Voices to one Will; which is to appoint one man or an Aſſembly of men to bear their Perſon, to ſubmit their Wills to his Will: this is a real Unity of them all in one Perſon, made by Covenant of every man with every man, as if every man ſhould ſay to every man, I authoriſe, and give up my Right of Governing my ſelf to this man, or this Aſſembly of men, on this Condition, that thou give up thy Right to him, and authoriſe all his Actions. This done, the Multitude ſo united in one Perſon, is called a Commonwealth.*

To authoriſe and give up his Right of Governing himſelf, to confer all his Power and Strength, and to ſubmit his Will to another, is to lay down his Right of reſiſting: for if Right of Nature be a Liberty to uſe Power for Preſervation of Life, laying down of that Power muſt be a Relinquiſhing of Power

er to preſerve or defend Life, otherwiſe a man relinquiſheth nothing.

To reduce all the Wills of an Aſſembly by Plurality of Voices to one Will, is not a proper Speech, for it is not a Plurality but a Totality of Voices which makes an Aſſembly be of one Will, otherwiſe it is but the one Will of a major part of the Aſſembly, the Negative Voice of any one hinders the Being of the one Will of the Aſſembly, there is nothing more deſtructive to the true Nature of a lawful Aſſembly, than to allow a major part to prevail when the whole only hath Right. For a man to give up his Right to one that never Covenants to protect, is a great Folly, ſince it is neither *in Conſideration of ſome Right reciprocally transferred to himſelf, nor can he hope for any other Good, by ſtanding out of the way, that the other may enjoy his own original Right without hinderance from him by reaſon of ſo much Diminution of Impediments. pag. 66.*

X.

*The Liberty*, ſaith Mr. Hobs, *whereof there is ſo frequent and honourable Mention in the Hiſtories and Philoſophy of the ancient Greeks and Romans, and in the Writings and Diſcourſe of thoſe that from them have received all their Learning in the Politiques, is not the Liberty of particular men, but the Liberty of the Commonwealth. Whether a Commonwealth be Monarchical or Popular, the Freedom is ſtill the ſame.* Here I find Mr. *Hobs* is much miſtaken: for the Liberty of the *Athenians* and *Romans* was a Liberty only to be found in popular Eſtates, and not in Monarchies. This is clear by *Ariſtotle*, who calls a City a Community of Freemen, meaning every particular Citizen to be free. Not that eve-

every particular man had a Liberty to reſiſt his Governour, or do what he liſt, but a Liberty only for particular men, *to Govern* and *to be governed by Turns*, ἄρχειν and ἄρχεσθαι are *Ariſtotles* words: this was a Liberty not to be found in hereditary Monarchies: ſo *Tacitus* mentioning the ſeveral Governments of *Rome*, joyns the Conſulſhip and Liberty to be brought in by *Brutus*, becauſe by the annual Election of Conſuls, particular Citizens came in their Courſe to govern and to be governed. This may be confirmed by the Complaint of our Author, which followeth: *It is an eaſie thing for men to be deceived by the ſpecious name of Liberty: and for want of Judgment to diſtinguiſh, miſtake that for their private Inheritance or Birth-right which is the Right of the Publick only: And when the ſame Error is confirmed by the Authority of men in Reputation for their Writings on this Subject, it is no wonder if it produce Sedition and Change of Government. In the Weſtern parts of the World, we are made to receive our Opinions concerning the Inſtitution and Right of Common-wealths from* Ariſtotle *and* Cicero, *and other men, Greeks and Romans, that living under popular Eſtates, derived thoſe Rights not from the Principles of Nature, but tranſcribed them into their Books out of the Practice of their own Commonwealths, which were Popular.* And *becauſe the Athenians were taught (to keep them from Deſire of changing their Government) that they were Free-men, and all that lived under Monarchy, Slaves: therefore* Ariſtotle *puts it down in his Politiques. In Democracy Liberty is to be ſuppoſed, for it's commonly held that no man is free in any other Government. So* Cicero *and other Writers grounded their civil Doctrine on the Opinions of the* Romans, *who were taught to hate Monarchy, at firſt, by them that*

*that having depoſed their Sovereign, ſhared amongſt them the Sovereignty of* Rome. *And by reading of theſe* Greek *and* Latine *Authors, men from their Childhood have gotten a Habit (under a falſe ſhew of Liberty,) of favouring Tumults, and of licentious controuling the Actions of their Sovereigns.*

## XI.

Pag. 102. *Dominion paternal not attained by Generation, but by Contract,* which is the *Childs Conſent, either expreſs, or by other ſufficient Arguments declared.* How a Child can expreſs Conſent, or by other ſufficient Arguments declare it before it comes to the Age of Diſcretion I underſtand not, yet all men grant it is due before Conſent can be given; and I take it Mr. *Hobs* is of the ſame Mind, *pag.* 249. where he teacheth, that *Abrahams Children were bound to obey what Abraham ſhould declare to them for Gods Law: which they could not be but in Vertue of the Obedience they owed to their Parents;* they owed, not they covenanted to give. Alſo where he ſaith *pag.* 121. the *Father and Maſter being before the Inſtitution of Commonweals abſolute Sovereigns in their own Families,* how can it be ſaid that either Children or Servants were in the State of *jus naturæ* till the Inſtitutions of Commonweals? It is ſaid by Mr. *Hobs,* in his Book *De Cive, cap. 9. Section 7. the Mother originally hath the Government of her Children, and from her the Father derives his Right, becauſe ſhe brings forth and firſt nouriſheth them.* But we know that God at the Creation gave the Sovereignty to the man over the Woman, as being the nobler and principal Agent

Agent in Generation. As to the Objection, that *it is not known who is the Father to the Son, but by the diſcovery of the Mother*, and that *he is his Son whom the Mother will, and therefore he is the Mother's*: The anſwer is, that it is not at the Will of the Mother to make whom ſhe will the Father, for if the Mother be not in poſſeſſion of a Husband, the Child is not reckoned to have any Father at all; but if ſhe be in the poſſeſſion of a man, the Child, notwithſtanding whatſoever the Woman diſcovereth to the contrary, is ſtill reputed to be his in whoſe poſſeſſion ſhe is. No Child naturally and infallibly knows who are his true Parents, yet he muſt obey thoſe that in common reputation are ſo, otherwiſe the Commandement of *Honour thy Father and thy Mother* were in vain, and no Child bound to the obedience of it.

## XII.

If the Government of one man, and the Government of two men, make two ſeveral kinds of Government, why may not the Government of of two, and the Government of three do the like, and make a third? and ſo every differing Number a differing kind of Common-wealth. *If an Aſſembly of all* (as Mr. *Hobs* ſaith) *that will come together be a Democratie*, and *an Aſſembly of a part onely an Ariſtocratie*, *then* if all that will come together be but a part onely, a *Democratie* and *Ariſtocratie* are all one; and why muſt an Aſſembly of part be called an *Ariſtocratie*, and not a *Merocratie*? 94.

It ſeems Mr. *Hobs* is of the mind that there is but one kind of Government, and that is Mo- 87.

narchy, for he defines a *Commonwealth to be one Perſon, and an Aſſembly of men, or real Unity of them all in one and the ſame Perſon, the multitude ſo united he calls a Common-wealth:* This his Moulding of a Multitude into one Perſon, is the generation of his great *Leviathan*, the King of the Children of Pride, *pag.* 167. Thus he concludes the Perſon of a Commonwealth to be a Monarch.

## XIII.

I cannot but wonder Maſter *Hobs* ſhould ſay, *Page* 112. *the Conſent of a Subject to Sovereign Power is contained in theſe words, I Authoriſe, and do take upon me all his Actions, in which there is no reſtriction at all of his own former natural Liberty.* Surely here Maſter *Hobs* forgot himſelf; for before he makes the Reſignation to go in theſe words alſo, *I give up my Right of governing my ſelf to this man*: This is a reſtriction certainly of his own former natural Liberty, when he gives it away: and if a man allow his Sovereign to kill him, which Mr. *Hobs* ſeems to confeſs, how can he reſerve a Right to defend himſelf? And if a man have a Power and Right to kill himſelf, he doth not Authoriſe and give up his Right to his Sovereign, if he do not obey him when he commands him to kill himſelf.

## XIV.

Mr. *Hobs* ſaith, pag. 112. *No man is bound by the words themſelves of his Submiſſion to kill himſelf, or any other man: and conſequently that the Obligation a man may ſometimes have upon the Command of the Sovereign*

*vereign to execute any dangerous or diſhonourable Office, dependeth not on the words of our Submiſſion, but on the Intention, which is to be underſtood by the End thereof. When therefore our refuſal to Obey fruſtrates the End for which the Sovereignty was Ordained, then there is no liberty to refuſe : otherwiſe there is.* If no man be bound by the words of his Subjection to kill any other man, then a Sovereign may be denied the benefit of War, and be rendred unable to defend his People, and ſo the End of Government fruſtrated. If the Obligation upon the Commands of a Sovereign to execute a dangerous or diſhonourable Office, dependeth not on the words of our Submiſſion, but on the Intention, which is to be underſtood by the End thereof; No man, by Mr. *Hobs*'s Rules, is bound but by the words of his Submiſſion, the Intention of the Command binds not, if the words do not : If the Intention ſhould bind; it is neceſſary the Sovereign muſt diſcover it, and the People muſt diſpute and judge it; which how well it may conſiſt with the Rights of Sovereignty, Maſter *Hobs* may conſider: Whereas Maſter *Hobs* ſaith, the *Intention is to be underſtood by the End*; I take it he means the End by Effect, for the End and the Intention are one and the ſame thing; and if he mean the Effect, the Obedience muſt go before, and not depend on the underſtanding of the Effect, which can never be, if the Obedience do not precede it: In fine, he reſolves, refuſal to obey may depend upon the judging of what fruſtrates the End of Sovereignty, and what not, of which he cannot mean any other Judge but the People.

## XV.

Mr. *Hobs* puts a caſe by way of Queſtion. *A great many men together have already reſiſted the Sovereign Power unjuſtly, or committed ſome Capital Crime, for which every one of them expecteth death: whether have they not the liberty then to joyn together, and aſſiſt and defend one another? Certainly they have; for they but defend their Lives, which the Guilty man may as well do as the Innocent: There was indeed Injuſtice in the firſt breach of their Duty, their bearing of Arms ſubſequent to it, though it be to maintain what they have done, is no new unjuſt Act; and if it be only to defend their Perſons, it is not Unjuſt at all.* The only reaſon here alleged for the Bearing of Arms, is this; That there is no new unjuſt Act: as if the beginning only of a Rebellion were an unjuſt Act, and the continuance of it none at all. No better Anſwer can be given to this caſe, than what the Author himſelf hath delivered in the beginning of the ſame Paragraph, in theſe words; *To reſiſt the Sword of the Commonwealth in defence of another man, Guilty or Innocent, no man hath liberty: becauſe ſuch Liberty takes away from the Sovereign the Means of protecting us, and is therefore deſtructive of the very Eſſence of Government.* Thus he firſt anſwers the queſtion, and then afterwards makes it, and gives it a contrary Anſwer: other Paſſages I meet with to the like purpoſe. He ſaith, Page 66. *A man cannot lay down the Right of Reſiſting them that Aſſault him by Force to take away his Life: The ſame may be ſaid of Wounds, Chains, and Impriſonment.*

Page

Page 69. *A Covenant to defend my ſelf from Force by Force, is void.* Pag. 68. *Right of Defending Life and Means of living, can never be abandoned.*

Theſe laſt Doctrines are deſtructive to all Government whatſoever, and even to the *Leviathan* it ſelf: hereby any Rogue or Villain may murder his Sovereign, if the Sovereign but offer by force to whip or lay him in the Stocks, ſince Whipping may be ſaid to be wounding, and Putting in the Stocks an Impriſonment: ſo likewiſe every mans Goods being a Means of Living, if a man cannot abandon them, no Contract among men, be it never ſo juſt, can be obſerved: thus we are at leaſt in as miſerable condition of War, as Mr. *Hobs* at firſt by Nature found us.

## XVI.

*The Kingdom of God ſignifies,* (ſaith Maſter *Hobs*, page 216.) *a Kingdom conſtituted by the Votes of the People of* Iſrael *in a peculiar manner, wherein they chooſe God for their King, by Covenant made with him, upon God's promiſing them* Canaan. If we look upon Maſter *Hob's* Text for this, it will be found that the People did not Conſtitute by Votes, and chooſe God for their King; But by the Appointment firſt of God himſelf, the Covenant was to be a God to them: they did not contract with God, that if he would give them *Canaan*, they would be his Subjects, and he ſhould be their King; It was not in their power to chooſe whether God ſhould be their God, yea, or nay: for it is confeſſed, *He reigned naturally over all by his Might.* If God Reigned naturally, he had a Kingdom,

and Sovereign Power over his Subjects, not acquired by their own Conſent. This Kingdom, ſaid to be conſtituted by the Votes of the People of *Iſrael*, is but the Vote of *Abraham* only: his ſingle Voyce carried it; he was the Repreſentative of the People. For at this Vote, it is confeſſed, that the Name of *King* is not given to God, nor of *Kingdom* to *Abraham*; yet the thing, if we will believe Maſter *Hobs*, is all one. If a Contract be the mutual transferring of Right, I would know what Right a People can have to transferr to God by Contract. Had the People of *Iſrael* at Mount *Sinai* a Right not to obey God's Voice? If they had not ſuch a Right, what had they to transferr?

The Covenant mentioned at Mount *Sinai* was but a Conditional Contract, and God but a Conditional King; and though the People promiſed to obey Gods word, yet it was more than they were able to perform, for they often diſobeyed Gods Voice, which being a breach of the Condition, the Covenant was void, and God not their King by Contract.

It is complained by God, *They have rejected me that I ſhould reign over them*: but it is not ſaid, according to their Contract; for I do not find that the Deſiring of a King was a breach of their Contract of Covenant, or diſobedience to the Voice of God: there is no ſuch Law extant.

The People did not totally reject the Lord, but in part onely, out of timorouſneſs, when they ſaw *Nahaſh* King of the Children of *Ammon* come againſt them; they diſtruſted that God would not ſuddenly provide for their Deliverance, as if they had had alwayes a King in readineſs to go up preſently

ſently to fight for them: This Deſpair in them who had found ſo many miraculous deliverances under Gods Government, was that which offended the Lord ſo highly: they did not deſire an Alteration of Government, and to caſt off Gods Laws, but hoped for a certainer and ſpeedier deliverance from danger in time of War. They did not petition that they might chooſe their King themſelves, that had been a greater ſin; and yet if they had, it had not been a total rejection of Gods Reigning over them, as long as they deſired not to depart from the Worſhip of God their King, and from the Obedience of his Laws. I ſee not that the Kingdom of God was caſt off by the Election of *Saul*, ſince *Saul* was choſen by God himſelf, and governed according to Gods Laws. The Government from *Abraham* to *Saul* is no where called the Kingdom of God, nor is it ſaid, that the Kingdom of God was caſt off at the Election of *Saul*.

Mr. *Hobs* allows, that *Moſes alone had, next under God, the Sovereignty over the Iſraelites*, p. 252. but he doth not allow it to *Joſhua*, but will have it deſcend to *Eleazar* the High-Prieſt, *Aaron's* ſon. His Proof is, God expreſly ſaith concerning *Joſhua, He ſhall ſtand before* Eleazar, *who ſhall ask Counſel for him before the Lord*, (after the judgment of *Urim*, is omitted by Mr. *Hobs*) *at his word they ſhall go out*, &c. therefore the *Supreme Power of making Peace and War was in the Prieſt*. Anſw. The work of the High-Prieſt was onely *Miniſterial*, not *Magiſterial*; he had no power to Command in War, or to Judge in Peace; onely when the Sovereign or Governour did go up to

War, he enquired of the Lord by the Miniſtry of the High Prieſt, and, as the *Hebrews* ſay, the Enquirer with a ſoft voice, as one that prayeth for himſelf, asked: and forthwith the Holy Ghoſt came upon the Prieſt, and he beheld the Breſt-plate, and ſaw therein by the Viſion of Prophecy, *Go up*, or *go not up*, in the letters that ſhewed forth themſelves upon the Breſt-plate before his face: then the Prieſt anſwered him, *Go up*, or *Go not up*. If this Anſwer gave the Prieſt Sovereignty, then neither King *Saul* nor King *David* had the Sovereignty, who both asked Counſel of the Lord by the Prieſt.

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OBSER-

# OBSERVATIONS ON Mr. Milton Againſt *SALMASIUS.*

## I.

AMong the many Printed Books, and ſeveral Diſcourſes touching the Right of *Kings*, and the Liberty of the *People*, I cannot find that as yet the firſt and chief Point is agreed upon, or indeed ſo much as once diſputed. The wotd *King* and the word *People* are familiar, one would think every ſimple man could tell what they ſignified; but upon Examination it will be found, that the learnedſt cannot agree of their Meaning.

Ask *Salmaſius* what a King is, and he will teach us, that *a King is he who hath the Supreme Power of the*

*the Kingdom, and is accountable to none but God, and may do what he pleaſe, and is free from the Laws.* This Definition *J. M.* abominates as being the Definion of a Tyrant: And I ſhould be of his Mind, if he would have vouchſafed us a better, or any other Definition at all, that would tell us how any King can have a Supreme Power, without being freed from humane Laws: To find fault with it, without producing any other, is to leave us in the Dark: but though Mr. *Milton* brings us neither Definition nor Deſcription of a King, yet we may pick out of ſeveral Paſſages of him, ſomething like a Definition, if we lay them together. He teacheth us that *Power was therefore given to a King by the People, that he might ſee by the Authority to him committed, that nothing be done againſt Law: and that he keeps our Laws, and not impoſe upon us his own: Therefore there is no Regal Power but in the Courts of the Kingdom, and by them*, pag. 155.

And again he affirmeth, *the King cannot Impriſon, Fine or puniſh any man, except he be firſt cited into ſome Court; where not the King, but the uſual Judges give Sentence*, pag. 168. and before we are told, *not the King, but the Authority of Parliament doth ſet up and take away all Courts*, pag. 167.

Lo here the Deſcription of a King, He is *one to whom the People give Power, to ſee that nothing be done againſt Law*: and yet he ſaith there is *no Regal Power but in the Courts of Juſtice and by them, where not the King, but the uſual Judges give Sentence.* This Deſcription not only ſtrips the King of all Power whatſoever, but puts him in a Condition below the meaneſt of his Subjects.

Thus

Thus much may ſhew, that all men are not agreed what a King is. Next, what the word *People* means is not agreed upon: ask *Ariſtotle* what the People is, and he will not allow any Power to be in any but in free Citizens. If we demand who be free Citizens? That he cannot reſolve us; for he confeſſeth that *he that is a free Citizen in one City, is not ſo in another City.* And he is of Opinion that *no Artificer ſhould be a free Citizen, or have Voice in a well ordered Commonwealth*; he accounts a *Democracy* (which word ſignifies the Government of the People) *to be a corrupted ſort of Government*; he thinks *many men by Nature born to be Servants, and not fit to govern as any part of the People.* Thus doth *Ariſtotle* curtal the People, and cannot give us any certain Rule to know who be the People: Come to our Modern Politicians, and ask them who the People is, though they talk big of the People, yet they take up, and are content with a *few Repreſentors* (as they call them) *of the whole People*; a Point *Ariſtotle* was to ſeek in, neither are theſe Repreſentors ſtood upon to be the whole People, but the *major part of theſe Repreſentors muſt be reckoned for the whole People*; nay *J. M.* will not allow the major part of the Repreſentors to be the People, but the *ſounder and better part only* of them; and in right down terms he tells us pag. 126. *to determine who is a Tyrant, he leaves to Magiſtrates, at leaſt to the uprighter ſort of them and of the People*, pag. 7. *though in number leſs by many, to judge as they find cauſe.* If the *ſounder, the better, and the uprighter* Part have the Power of the People, how ſhall we know, or who ſhall judge who they be?

II.

## II.

One Text is urged by Mr. *Milton*, for the Peoples Power: Deut. 17. 14. *When thou art come into the Land which thy Lord thy God giveth thee, and ſhalt ſay, I will ſet a King over me, like as all the Nations about me.* It is ſaid, by the Tenure of Kings *theſe words confirm us that the Right of Chooſing, yea of Changing their own Government, is by the Grant of God himſelf in the People*: But can the foretelling or forewarning of the *Iſraelites* of a wanton and wicked Deſire of theirs, which God himſelf condemned, be made an Argument that God gave or granted them a Right to do ſuch a wicked thing? or can the Narration and reproving of a Future Fact, be a Donation and approving of a preſent Right, or the Permiſſion of a Sin be made a Commiſſion for the doing of it? The Author of his Book againſt *Salmaſius*, falls ſo far from making God the Donor or Grantor, that he cites him only for a Witneſs, *Teſte ipſo Deo penes populos arbitrium ſemper fuiſſe, vel ea, quæ placeret forma reipub. utendi, vel hanc in aliam mutandi; de Hebræis hoc diſertè dicit Deus: de reliquis non abnuit.*

*That* here in this Text *God himſelf being Witneſs, there was always a Power in the People, either to uſe what Form of Government they pleaſed, or of changing it into another: God ſaith this expreſly of the* Hebrews, *and denies it not of others.* Can any man find that God in this Text expreſly ſaith, that there was always a Right in the People to uſe what Form of Government they pleaſe? The Text not warranting this Right of the People, the Foundation of the Defence

Defence of the People is quite taken away; there being no other Grant or proof of it pretended.

2. Where it is ſaid, that *the Iſraelites deſired a King, though then under another Form of Government*; in the next line but one it is confeſſed, they had a King at the time when they deſired a King, which was God himſelf, and his Vice-roy *Samuel*; and ſo ſaith God, *They have not rejected thee; but they have rejected me, that I ſhould not reign over them*; yet in the next Verſe God ſaith, *As they have forſaken me, ſo do they alſo unto thee.* Here is no Shew of any other Form of Government but Monarchy: God by the Mediation of *Samuel* reigned, who made his Sons Judges over *Iſrael*; when one man conſtitutes Judges, we may call him a King; or if the Having of Judges do alter the Government, then the Government of every Kingdom is altered from Monarchy, where Judges are appointed by Kings: it is now reckoned one of the Duties of Kings to judge by their Judges only.

Where it is ſaid, *He ſhall not multiply to himſelf Horſes, nor Wives, nor Riches, that he might underſtand that he had no Power over others, who could Decree nothing of himſelf, extra Legem*; if it had ſaid, *contra legem Dei*, it had been true, but if it meant *extra legem humanam*, it is falſe.

4. If there had been any Right given to the People, it ſeems it was to the Elders onely; for it is ſaid, it was the Elders of *Iſrael* gathered together, petitioned for a King; it is not ſaid, it was all the People, nor that the People did chooſe the Elders, who were the Fathers and Heads of Families, authorized by the Judges.

5. Where

5. Where it is ſaid, *I will ſet a King over me like as all the Nations about me. To ſet a King, is*, not to chooſe a King, but by ſome ſolemn publick Act of Coronation, or otherwiſe to acknowledge their Allegiance to the King choſen; It is ſaid, thou ſhalt *ſet him King whom the Lord thy God ſhall chooſe.* The Elders did not deſire to chooſe a King like other Nations, but they ſay, *now make us a King to judge us like all the Nations.*

III.

As for *Davids* Covenant with the Elders when he was annointed, it was not to obſerve any Laws or Conditions made by the People, for ought appears; but to keep Gods Laws and ſerve him, and to ſeek the Good of the People, as they were to protect him.

6. The *Reubenites* and *Gadites* promiſe their Obedience, not according to their Laws or Conditions agreed upon, but in theſe words *All that thou cammandeſt us we will do, and whitherſoever thou ſendſt us we will go, as we harkened to* Moſes *in all things, ſo will we harken unto thee: only the Lord thy God be with thee as he was with* Moſes. Where is there any Condition of any humane Law expreſſed? Though the rebellious Tribes offered Conditions to *Rehoboam*; where can we find, that *for like Conditions not performed, all Iſrael depoſed Samuel?* I wonder Mr. *Milton* ſhould ſay this, when within a few Lines after he profeſſeth, that *Samuel had governed them uprightly.*

IV.

## IV.

*Jus Regni* is much ſtumbled at, and the Definition of a King which ſaith *His Power is ſupreme in the Kingdom, and he is accountable to none but to God, and that he may do what he pleaſe, and is not bound by Laws*: it is ſaid if this Definition be good, no man is or ever was, who may be ſaid to be a Tyrant; *p.*14. for *when he hath violated all divine and humane Laws, nevertheleſs he is a King, and guiltleſs jure Regio,* To this may be anſwered, That the Definition confeſſeth he is accountable to God, and therefore not guiltleſs if he violate Divine Laws: Humane Laws muſt not be ſhuffled in with Divine, they are not of the ſame Authority: if humane Laws bind a King, it is impoſſible for him to have Supreme Power amongſt men. If any man can find us out ſuch a kind of Government, wherein the ſupreme Power can be, without being freed from humane Laws, they ſhould firſt teach us that; but if all ſorts of popular Government that can be invented, cannot be one Minute, without an Arbitrary Power, freed from all humane Laws: what reaſon can be given why a Royal Government ſhould not have the like Freedom? if it be Tyranny for one man to govern arbitrarily, why ſhould it not be far greater Tyranny for a multitude of men to govern without being accountable or bound by Laws? It would be further enquired how it is poſſible for any Government at all to be in the World without an arbitrary Power; it is not Power except it be arbitary: a legiſlative Power cannot be without being abſolved from humane Laws, it cannot be ſhewed how a King

King can have any Power at all but an arbitrary Power. We are taught, that *Power was therefore given to a King by the People, that he might ſee by the Authority to him committed, that nothing be done againſt Law; and that he keep our Laws, and not impoſe upon us his own: therefore there is no Royal Power, but in the Courts of the Kingdom, and by them*, pag. 155. And again it is ſaid, *the King cannot Impriſon, Fine or Puniſh any man except he be firſt cited into ſome Court, where not the King but the uſual Judges give Sentence*, pag. 168. and before, we are told, *not the* King, *but the Authority of* Parliament *doth ſet up and take away all Courts*, pag. 167.

Lo here we have Mr. *Milton*'s perfect Definition of a King: He is one to whom the People gave *Power to ſee that nothing be done againſt Law, and that he keep our Laws, and not impoſe his own.* Whereas all other men have the Faculty of Seeing by Nature, the King only hath it by the Gift of the People, other Power he hath none; he may ſee the Judges keep the Laws if they will; he cannot compell them, for he may not Impriſon, Fine, nor puniſh any man; the Courts of Juſtice may, and they are ſet up and put down by the Parliament: yet in this very Definition of a King, we may ſpy an arbitrary Power in the King; for he may wink if he will: and no other Power doth this Deſcription of a King give, but only a Power to ſee: whereas it is ſaid *Ariſtotle doth mention an abſolute Kingdom, for no other Cauſe, but to ſhew how abſurd, unjuſt and moſt tyrannical it is.* There is no ſuch thing ſaid by *Ariſtotle*, but the contrary, where he ſaith, that a *King according to Law makes no ſort of Government*; and after he had reckoned up five ſorts of Kings, he con-

concludes, that there were in a manner but two ſorts, the *Lacedemonian* King, and the Abſolute King; whereof the firſt was but as General in an Army, and therefore no King at all, and then fixes and reſts upon the *Abſolute King, who ruleth according to his own Will.*

V.

If it be demanded what is meant by the word *People*? 1. Sometimes it is *Populus univerſus*, and then every Child muſt have his Conſent asked, which is impoſſible. 2. Sometimes it is *pars major*, and ſometimes it is *pars potior & ſanior*; How the major part, where all are alike free, can bind the minor part, is not yet proved.

But it ſeems the major part will not carry it, nor be allowed, except they be the *better part, and the ſounder part.* We are told, *the ſounder part implored the help of the Army, when it ſaw it ſelf and the Commonwealth betrayed*; and that the *Souldiers judged better than the Great Councel, and by Arms ſaved the Commonwealth, which the Great Councel had almoſt damned by their Votes*, p. 7.

Here we ſee what the *People* is; to wit, *the ſounder part*; *of which the Army is the judge*: thus, upon the matter, the Souldiers are the People: which being ſo, we may diſcern where the Liberty of the People lieth, which we are taught to conſiſt *all for the moſt part in the power of the Peoples Chooſing what Form of Government they pleaſe* pag. 61. A miſerable Liberty, which is onely to chooſe to whom we will give our Liberty, which we may not keep. See more concerning the People, in a Book entituled *The Anarchy*, p. 8, 9, 10, 11, 12, 13, 14.

## VI.

We are taught, that *a Father and a King are things moſt diverſe. The Father begets us, but not the King; but we create the King: Nature gives a Father to the People, the People give themſelves a King: If the Father kill his Son he loſeth his life, why ſhould not the King alſo?* p. 34.

*Anſ.* Father and King are not ſo diverſe; it is confeſſed, that at firſt they were all one, for there is confeſſed *Paternum imperium & hæreditarium*, p. 141. and this Fatherly Empire, as it was of it ſelf *hereditary*, ſo it was *alienable* by Patent, and *ſeizable* by an Uſurper, as other goods are: and thus every King that now is, hath a Paternal Empire, either by Inheritance, or by Tranſlation, or Uſurpation; ſo a Father and a King may be all one.

A Father may dye for the Murther of his Son, where there is a Superiour Father to them both, or the Right of ſuch a Supreme Father; but where there are onely Father and Sons, no Sons can queſtion the Father for the death of their Brother: the reaſon why a King cannot be puniſhed, is not becauſe he is excepted from Puniſhment, or doth not deſerve it, but becauſe there is no Superiour to judge him, but God onely, to whom he is reſerved.

## VII.

It is ſaid thus, *He that takes away from the People the power of Chooſing for themſelves what Form of Government they pleaſe, he doth take away that wherein all Civil Liberty almoſt conſiſts*, p. 65. If almoſt all Liber-

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ty be in Chooſing of the Kind of Government, the People have but a poor Bargain of it, who cannot exerciſe their Liberty, but in Chopping and Changing their Government, and have liberty onely to give away their Liberty, than which there is no greater miſchief, as being the cauſe of endleſs Sedition.

## VIII.

*If there be any Statute in our Law, by which thou canſt find that Tyrannical Power is given to a King, that Statute being contrary to Gods Will, to Nature and Reaſon, underſtand that by that general and primary Law of ours, that Statute is to be repealed, and not of force with us*, p.153. Here, if any man may be judge, what Law is contrary to Gods Will, or to Nature, or to Reaſon, it will ſoon bring in Confuſion: Moſt men that offend, if they be to be puniſhed or fined, will think that Statute that gives all Fines and Forfeitures to a King, to be a Tyrannical Law; thus moſt Statutes would be judged void, and all our Fore-fathers taken for Fools or Madmen, to make all our Laws to give all Penalties to the King.

## IX.

The ſin of the Children of *Iſrael* did lye, not in Deſiring a King, but in deſiring ſuch a King like as the Nations round about had; they diſtruſted God Almighty, that governed them by the Monarchical Power of *Samuel*, in the time of oppreſſion, when God provided a Judge for them; but they deſired a perpetual and hereditary King, that they might never want: in Deſiring a King they could not ſin,

for it was but Deſiring what they enjoyed by Gods ſpecial Providence.

X.

Men are perſwaded, that in Making of a Covenant, ſomething is to be performed on both parts by mutual Stipulation; which is not alwayes true: for we find God made a *Covenant with* Noah *and his Seed, with all the Fowl and the Cattel, not to deſtroy the Earth any more by a flood.* This Covenant was to be kept on Gods part, neither *Noah*, nor the Fowl, nor the Cattel were to perform any thing by this Covenant. On the other ſide, *Gen.* 17. 9, 10. God covenants with *Abraham*, ſaying, *Thou ſhalt keep my Covenant,----every male child among you ſhall be circumciſed.* Here it is called Gods Covenant, though it be to be performed onely by *Abraham*; ſo a Covenant may be called the Kings Covenant, becauſe it is made to him, and yet to be performed only by the People. So alſo, 2 *Kin.* 11. 17. *Jehoiada made a Covenant between the Lord, and the King, and the People, that they ſhould be the Lords People.* Between the *King alſo and the People*, which might well be, that the People ſhould be the Kings Servants: and not for the King's covenanting to keep any Humane Laws, for it is not likely the King ſhould either Covenant, or take any Oath to the People when he was but ſeven years of age, and that never any King of *Iſrael* took a Coronation-Oath that can be ſhewed: when *Jehoiada* ſhewed the King to the Rulers in the Houſe of the Lord, he took an Oath of the People: he did not Article with them, but ſaith the next Verſe, *Commanded them to keep a Watch of the Kings Houſe, and that they ſhould compaſs the King round about, every*

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*ry man with his weapon in his hand; and he that cometh within the Ranges, let him be ſlain.*

## XI.

To the Text, *Where the word of a King is, there is Power, and who may ſay unto him, What doſt thou?* J. M. gives this Anſwer: *It is apparent enough, that the Preacher in this place gives Precepts to every private man, not to the great Sanhedrin, nor to the Senate--- ſhall not the Nobles, ſhall not all the other Magiſtrates, ſhall not the whole People dare to mutter, ſo oft as the King pleaſeth to dote?* We muſt here note, that the great Councel, and all other Magiſtrates or Nobles, or the whole People, compared to the King, are all but private men, if they derive their Power from him: they are Magiſtrates under him, and out of his Preſence, for when he is in place, they are but ſo many private men. *J. M.* asks, *Who ſwears to a King, unleſs the King on the other ſide be ſworn to keep Gods Laws, and the Laws of the Countrey?* We find that the Rulers of *Iſrael* took an Oath at the Coronation of *Jehoaſh*: but we find no Oath taken by that King, no not ſo much as to Gods Laws, much leſs to the Laws of the Countrey.

## XII.

*A Tyrant is he, who regarding neither Law nor the Common Good, reigns onely for himſelf and his Faction;* p. 19. In his Defence he expreſſeth himſelf thus, *He is a Tyrant who looks after only his own, and not his Peoples profit,* Eth. l. 10. p. 189.

1. If it be Tyranny not to regard the Law, then all Courts of Equity, and Pardons for any Offences muſt be taken away: there are far more Sutes for relief againſt the Laws, than there be for the obſervation of the Laws: there can be no ſuch Tyranny in the World as the Law, if there were no Equity to abate the rigour of it. *Summum Jus* is *Summa Injuria*; if the Penalties and Forfeitures of all Laws ſhould ſtill be exacted by all Kings, it would be found, that the greateſt Tyranny would be, for a King to govern according to Law; the Fines, Penalties, and Forfeitures of all Laws are due to the Supreme Power onely, and were they duely paid, they would far exceed the Taxes in all places. It is the chief happineſs of a Kingdom, and their chief Liberty, not to be governed by the Laws Only.

2. *Not to regard the Common Good, but to reign only for himſelf*, is the ſuppoſition of an impoſſibility in the judgment of *Ariſtotle*, who teacheth us, that *the deſpotical Power cannot be preſerved, except the Servant, or he in ſubjection, be alſo preſerved.* The truth of this ſtrongly proves, That it is in Nature impoſſible to have a Form of Government that can be for the deſtruction of a People, as Tyranny is ſuppoſed; if we will allow People to be governed, we muſt grant, they muſt in the firſt place be preſerved, or elſe they cannot be governed.

Kings have been, and may be vitious men, and the Government of one, not ſo good as the Government of another; yet it doth not follow, that the Form of Government is, or can be in its own nature ill, becauſe the Governour is ſo: it is Anarchy, or want of Government, that can totally deſtroy a Nation. We cannot find any ſuch Government as Tyranny

ranny mentioned or named in Scripture, or any word in the Hebrew Tongue to expreſs it. After ſuch time as the Cities of *Greece* practiſed to ſhake off Monarchy, then, and not till then, (which was after *Homer*'s time) the name of Tyrant was taken up for a word of Diſgrace, for ſuch men as by craft or Force wreſted the Power of a City from a Multitude to one man onely; and not for the *exerciſing*, but for the *ill-obtaining* of the Government: but now every man that is but thought to govern ill, or to be an ill man, is preſently termed a Tyrant, and ſo judged by his Subjects. Few remember the Prohibition, *Exod.* 22. 28. *Thou ſhalt not revile the Gods, nor curſe the Ruler of thy People*: and fewer underſtand the reaſon of it. Though we may not one judge another, yet we may ſpeak evil or revile one another, in that which hath been lawfully judged, and upon a Tryal wherein they have been heard and condemned: this is not to judge, but onely to relate the judgment of the Ruler. To ſpeak evil, or to revile a Supreme Judge, cannot be without judging him who hath no Superiour on Earth to judge him, and in that regard muſt alwayes be preſumed innocent, though never ſo ill, if he cannot lawfully be heard.

*J. M.* That will have it Tyranny in a King not to regard the Laws, doth himſelf give as little Regard to them as any man; where he reckons, that *Conteſting for Privileges, Cuſtoms, Forms, and that old entanglement of Iniquity, their gibriſh Laws, are the Badges of ancient Slavery.* Tenure, pag. 3. *a Diſputing Preſidents, Forms and Circumſtances*, pag. 5.

*J. M.* is alſo of opinion, That, *If at any time our Fore-fathers, out of baſeneſs, have loſt any thing of their*

*Right, that ought not hurt us; they might if they would promiſe Slavery for themſelves, for us certainly they could not, who have alwayes the ſame Right to free our ſelves, that they had to give themſelves to any man in Slavery.* This Doctrine well practiſed, layeth all open to conſtant Anarchy.

Laſtly, If any deſire to know what the Liberty of the People is, which *J. M.* pleads for, he reſolves us, ſaying, That *he that takes away from the People the Right of Chooſing what Form of Government they pleaſe, takes away truly that in which all Liberty doth almoſt conſiſt.* It is well ſaid by *J. M.* that all Liberty doth almoſt conſiſt in Chooſing their Form of Government, for there is another liberty exerciſed by the People, which he mentions not, which is the liberty of the Peoples Chooſing their Religion; every man may be of any Religion, or of no Religion; *Greece* and *Rome* have been as famous for *Polytheiſme*, or multitudes of gods, as of Governours; and imagining Ariſtocratie and Democratie in Heaven, as on Earth.

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OBSER-

# OBSERVATIONS UPON H. Grotius DE JURE BELLI, & PACIS.

IN moſt Queſtions of Weight and Difficulty concerning the Right of War, or Peace, or Supreme Power, *Grotius* hath Recourſe to the Law of Nature or of Nations, or to the Primitive Will of thoſe men who firſt joyned in Society. It is neceſſary therefore a little to lay open the Variety or Contrariety in the Civil and Canon Law, and in *Grotius* himſelf, about the Law of Nature and Nations, not with a Purpoſe to raiſe any Contention about Words or Phraſes, but with a Deſire to reconcile or expound the Senſe of different Terms.

*Civi-*

*Civilians*, *Canoniſts*, *Politicians* and *Divines*, are not a little perplexed in diſtinguiſhing between the Law of *Nature*, and the Law of *Nations*; about *Jus Naturæ*, and *Jus Gentium*, there is much Diſpute by ſuch as handle the Original of Government, and of *Property* and *Community*.

The Civil Law in one Text allows a threefold Diviſion of *Law*, into *Jus Naturæ*, *Jus Gentium*, and *Jus Civile*. But in another Text of the ſame Law, we find only a twofold Diviſion, into *Jus Civile*, and *Jus Gentium*. This latter Diviſion the Law takes from *Gaius*, the former from *Ulpian*, who will have *Jus Naturale* to be *that which Nature hath taught all Creatures*, *quod Natura omnia animalia Docuit*, but for this he is confuted by *Grotius*, *Salmaſius*, and others, who reſtrain the Law of Nature only to *men uſing Reaſon*; which makes it all one with the *Law of Nations*; to which the Canon Law conſents, and ſaith, That *Jus Naturale eſt commune omnium nationum*: *That which Natural Reaſon appoints all men to uſe, is the Law of Nations*, ſaith *Theophilus* in the Text of the Civil Law: and in the ſecond Book of the *Inſtit. cap.* 1. *Jus Naturæ* is confounded with *Jus Gentium*.

As the *Civilians* ſometimes confound and ſometimes ſeparate the Law of *Nature* and the Law of *Nations*, ſo other-whiles they make them alſo contrary one to the other. *By the Law of Nature all men are born free*; *Jure naturali omnes liberi naſcuntur*. But *Servitude is by the Law of Nations*: *Jure Gentium Servitus invaſit*, ſaith *Ulpian*.

And

And the Civil Law not only makes the Law of *Nature* and of *Nations* contrary, but alſo will have the Law of Nations contrary to it ſelf. *War*, ſaith the Law, *was brought in by the Law of Nations. Ex jure gentium introducta bella*, and yet the Law of Nations ſaith, *Since Nature hath made us all of one Kindred, it follows it is not lawful for one man to lye in Wait for another. Cùm inter nos cognitionem quandam natura conſtituit, conſequens eſt hominem homini inſidiari nefas eſſe*, ſaith *Florentinus*.

Again, the Civil Law teacheth, that *from the Law of Nature proceeds the Conjunction of man and women, the Procreation and Education of Children.* But as for *Religion to God, and Obedience to Parents* it makes it to be *by the Law of Nations.*

To touch now the *Canon Law*, we may find in one place that *men are governed either by the Law of Nature, or by Cuſtoms. Homines reguntur Naturali jure, aut moribus.* The *Law of Nations* they call a Divine Law, *the Cuſtoms a humane Law*; *Leges aut divinæ ſunt aut humanæ; divinæ naturâ, humanæ moribus conſtant.* But in the next place the Canon Law makes *Jus* to be either *Naturale, aut Civile, aut Gentium.* Though this Diviſion agree in Terms with that of *Ulpian* in the Civil Law, yet in the Explication of the Terms there is Diverſity; for what one Law makes to belong to the Law of *Nature*, the other refers to the Law of *Nations*, as may eaſily appear to him that will take the Pains to compare the Civil and Canon Law in theſe Points.

A principal Ground of theſe Diverſities and Contrarieties of Diviſions, was an Error which the Heathens taught, that *all things at firſt were common*, and that *all men were equal*. This Miſtake was not ſo heinous in thoſe Ethnick Authors of the Civil Laws, who wanting the Guide of the Hiſtory of *Moſes*, were fain to follow Poets and Fables for their Leaders. But for Chriſtians, who have read the Scriptures, to dream either of a *Community of all things*, or *an Equality of all Perſons*, is a Fault ſcarce pardonable.

To ſalve theſe apparent Contrarieties of *Community* and *Property*; or *Equality* and *Subjection*: the Law of *Jus Gentium* was firſt invented; when that could not ſatisfie, to mend the matter, this *Jus Gentium*, was divided into a *Natural Law of Nations*, and *an Humane Law of Nations*; and the Law of Nature into a *Primary* and a *Secondary* Law of Nature; Diſtinctions which make a great ſound, but edifie not at all if they come under Examination.

If there hath been a time when all things were common, and all men equal, and that it be otherwiſe now; we muſt needs conclude that the Law by which all things were common, and men equal, was contrary to the Law by which now things are proper, and men ſubject.

If we will allow *Adam* to have been Lord of the World and of his Children, there will need no ſuch Diſtinctions of the Law of Nature and of Nations: For the Truth will be, that whatſoever the Heathens comprehended under theſe two Laws, is compriſed in the Moral Law.

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That the Law of Nature is one and the ſame with the Moral, may appear by a Definition given by *Grotius*. *The Law of Nature* (ſaith he) *is the Dictate of Reaſon, ſhewing that in every Action by the agreeing or diſagreeing of it with natural Reaſon, there is a moral Honeſty or Diſhoneſty, and conſequently that ſuch an Action is commanded or forbidden by God the Author of Nature.* I cannot tell how *Grotius* would otherwiſe have defined the Moral Law. And the *Canon* Law grants as much; teaching that *the Law of Nature is contained in the Law and the Goſpel: Whatſoever ye will that men do*, &c. *Mat.* 7.

The Term of *Jus Naturæ* is not originally to be found in Scripture, for though *T. Aquinas* takes upon him to prove out of the 2. to the *Romans*, that there is a *Jus Naturæ*, yet St. *Paul* doth not uſe thoſe expreſs Terms; his words are, *The Gentiles which have not the Law, do by Nature the things contained in the Law, theſe having not the Law are a Law unto themſelves*: He doth not ſay, Nature is a Law unto them, but they are a Law unto themſelves. As for that which they call the Law of *Nations*, it is not a Law diſtinct, much leſs oppoſite to the Law of *Nature*, but it is a ſmall Branch or Parcel of that great Law; for it is nothing but the Law of Nature, or the moral Law between Nations. The ſame Commandment that forbids one Private man to rob another, or one Corporation to hurt another Corporation, obliges alſo one King not to rob another King, and one Commonwealth not to ſpoil another: the ſame Law that enjoyns Charity to all men, even to Enemies,

mies, binds Princes and States to ſhew Charity to one another, as well as private Perſons.

And as the *Common, or Civil Laws* of each Kingdom which are made againſt Treaſon, Theft, Murder, Adultery, or the like, are all and every one of them grounded upon ſome particular Commandment of the moral Law; ſo all the Laws of Nations muſt be ſubordinate and reducible to the moral Law.

The Law of Nature, or the moral Law is like the main Ocean, which though it be one entire Body, yet ſeveral Parts of it have diſtinct Names, according to the diverſity of the Coaſts on which they border. So it comes to paſs that the Law of Nations which is but a part of the Law of Nature, may be ſub-divided almoſt *in infinitum*, according to the Variety of the Perſons, or Matters about which it is converſant.

The Law of Nature or the divine Law is general, and doth only comprehend ſome Principles of Morality notoriouſly known of themſelves, or at the moſt is extended to thoſe things which by neceſſary and evident Inference are conſequent to thoſe Principles. Beſides theſe, many other things are neceſſary to the well-governing of a Commonwealth: and therefore it was neceſſary that by Humane Reaſon ſomething more in particular ſhould be determined concerning thoſe things which could not be defined by Natural Reaſon alone; hence it is that Humane Laws be neceſſary, as Comments upon the Text of the Moral Law: and of this Judgment is *Aquinas*, who teacheth, that *neceſſitas legis humanæ manat ex eo, quod Lex natu-*

*naturalis, vel Divina, generalis eſt, & ſolum complectitur quædam principia morum per ſe nota, & ad ſummum extenditur ad ea quæ neceſſaria & evidenti elatione ex illis principiis conſequuntur: præter illa verò multa alia ſunt neceſſaria in republica ad ejus rectam Gubernationem: & ideo neceſſarium fuit ut per humanam rationem aliqua magis in particulari determinarentur circa ea quæ per ſolam rationem naturalem definiri non poſſunt. Ludo. Molin de Juſt.* Thus much may ſuffice to ſhew the Diſtractions in and between the *Civil* and *Common Laws* about the Law of *Nature* and *Nations*. In the next place we are to conſider how *Grotius* diſtinguiſheth theſe Laws.

To maintain the Community of things to be Natural, *Grotius* hath framed new Diviſions of the Law of Nature. Firſt, in his Preface to his Books *De Jure Belli & Pacis*, he produceth a Definition of the Law of Nature, in ſuch doubtful, obſcure and reſerved Terms, as if he were diffident of his Undertaking: Next in his firſt Book and firſt Chapter he gives us another Diſtribution, which differs from his Doctrine in his Preface.

In his Preface his Principle is, that the *Appetite of Society, that is to ſay, of Community, is an Action proper to man.* Here he preſently corrects himſelf with an Exception, that *ſome other Creatures are found to deſire Society*; and withal he anſwers the Objections thus, that *this Deſire of Society in brute Beaſts, comes from ſome external Principle.* What he means by *Principium intelligens extrinſecum*, I underſtand not, nor doth he explain, nor is it material, nor is the Argument he uſeth

to

to any purpoſe; for, admitting all he ſaith to be true, yet his Principle fails; for the Queſtion is not, from what Principle this Deſire of Society proceeds in Beaſts, but whether there be ſuch a Deſire or no. Beſides, here he takes the Appetite of Society and Community to be all one, whereas many live in Society, which live not in Community.

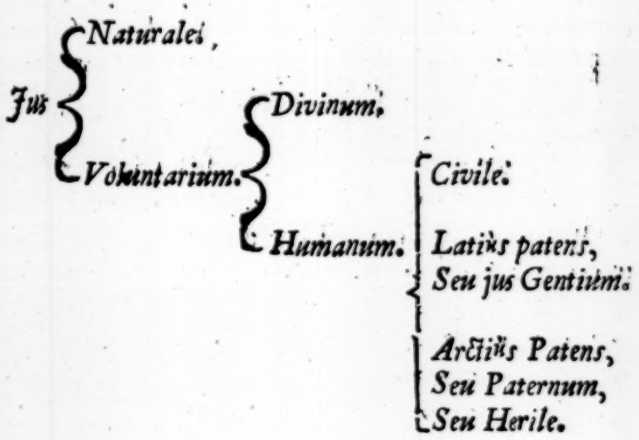
Next he teacheth, that *the keeping of Society (cuſtodia Societatis) which in a rude manner* (ſaith he) *we have now expreſſed, is the fountain of that Law which is properly ſo called.* I conceive by the Law properly ſo called, he intends the Law of Nature, though he expreſs not ſo much: And to this appetite of *Sociable Community* he refers *Alieni Abſtinentia*; but herein it may be he forgets himſelf, for where there is *Community* there is neither *meum* nor *tuum*, nor yet *alienum*; and if there be no *alienum*, there can be no *alieni abſtinentia.* To the ſame purpoſe he ſaith, that by *the Law of Nature* men muſt *ſtand to bargains, Juris naturæ ſit ſtare pactis.* But if all things were common by Nature, how could there be any bargain?

Again, *Grotius* tells us, that *from this ſignification of the Law there hath flowed another larger*, which conſiſts (ſaith he) *in Diſcerning what delights us or hurts us, and in judging how things ſhould be wiſely diſtributed to each one.* This latter he calls the *looſer Law of Nature*; the former, *Jus Sociale, the Law of Nature, ſtrictly, or properly taken. And theſe two Laws of Nature ſhould have place* (ſaith he) *though men ſhould deny there were a God.*

*a God. But to them that believe there is a God, there is another Original of Law, beſide the Natural, coming from the free Will of God, to the which our own Underſtanding tells us we muſt be ſubject.*

Thus have I gathered the Subſtance of what is moſt material concerning the Law of Nature, in his Preface.

If we turn to the Book it ſelf, we have a diviſion of the Law into




In the Definition of *Jus Naturale* he omits thoſe Subtilties of *Jus Naturæ proprie dictum*, and *quod laxius ita dicitur*, which we find in his Preface, and gives ſuch a plain Definition, as may fitly agree to the Moral Law. By this it ſeems the Law of Nature and the Moral Law are one and the ſame.

Whereas he affirmeth, that *the Actions about which the Law of Nature is conversant, are lawful or unlawful of themselves, and therefore are necessarily commanded or forbidden by God: by which mark this Law of Nature doth not onely differ from Humane Law, but from the Divine voluntary Law, which doth not command or forbid those things, which of themselves, and by their own nature are lawful or unlawful, but makes them unlawful by forbidding them, and due by commanding them.* In this he seems to make the *Law of Nature* to differ from *Gods Voluntary Law*; whereas, in God, *Necessary* and *Voluntary* are all one. *Salmasius de Usuris*, in the twentieth Chapter, condemns this opinion of *Grotius*; though he name him not, yet he means him, if I mistake not.

In the next place, I observe his saying, that some things are by the Law of Nature, not *propriè*, but *reductivè*; and that the *Law of Nature deals not onely with those things which are beside the Will of Man, but also with many things which follow the act of Mans Will: so Dominion, such as is now in Use, mans Will brought in: but now that it is brought in, it is against the Law of Nature, to take that from thee against thy Will, which is in thy Dominion.*

Yet for all this *Grotius* maintains that the *Law of Nature is so immutable, that it cannot be changed by God himself.* He means to make it good with a Distinction, *Some things* (saith he) *are by the Law of Nature, but not simply, but according to the certain State of things; so the common use of things was natural as long as Dominion was not brought*

*brought in; and Right for every man to take his own by Force, before Laws were made.* Here if *Grotius* would have ſpoken plain, in ſtead of *but not ſimply, but according to the certain State of Things*, he would have ſaid, *but not immutably, but for a certain Time.* And then this Diſtinction would have run thus; *Some things are by the Law of Nature, but not immutably, but for a certain time.* This muſt needs be the naked Senſe of his Diſtinction, as appears by his Explication in the Words following, where he ſaith, that *the Common Uſe of Things was natural ſo long as dominion was not brought in*: Dominion he ſaith was brought in by the will of man, whom by this Doctrine *Grotius* makes to be able to change that Law which God himſelf cannot change, as he ſaith. He gives a double ability to man; firſt, to make that no Law of Nature, which God made to be the Law of Nature: And next, to make that a Law of Nature which God made not; for now that Dominion is brought in, he maintains, it is againſt the Law of Nature to take that which is in another mans dominion.

Beſides, I find no Coherence in theſe words, *By the Law of Nature it was right for every man to take his own by force, before Laws made*, ſince by the *Law of Nature* no man had any thing of his own; and until Laws were made, there was no Propriety, according to his Doctrine.

*Jus Humanum voluntarium latius patens*, he makes to be *the Law of Nations, which* (ſaith he) *by the Will of All, or Many Nations, hath received a power to bind*, he adds, *of Many, becauſe*

*there is*, as he grants, *ſcarce any Law to be found common to all Nations, beſides the Law of Nature; which alſo is wont to be called the Law of Nations, being common to all Nations.* Nay, as he confeſſeth *often, that is the Law in one part of the World, which in another part of the World is not the Law of Nations.*

By theſe Sentences, it ſeems *Grotius* can ſcarce tell what to make to be the Law of Nations, or where to find it.

Whereas he makes the Law of Nations to have a binding Power from the Will of men, it muſt be remembred, that it is not ſufficient for men to have a Will to bind, but it is neceſſary alſo to have a Power to bind: Though ſeveral Nations have one and the ſame Law.

For inſtance, Let it be granted that Theft is puniſhed by Death in many Countreys, yet this doth not make it to be a Law of Nations, becauſe each Nation hath it but as a Natural, or Civil Law of their own Countrey; and though it have a binding Power from the Will of many Nations, yet becauſe each Nation hath but a Will and Power to bind themſelves, and may without prejudice conſent, or, conſulting of any Neighbour-Nation, Alter this Law, if they find Cauſe, it cannot properly be called *the Law of Nations.* That which is the foundation of the Law of Nations, is, to have it concern *ſuch things as belong to the mutual Society of Nations among themſelves*, as *Grotius* confeſſeth; and not of ſuch things as have no further relation than to the particular Benefit of each Kingdom: For, as private men muſt neglect

*Lib.*4.*c.*8.

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their own Profit for the Good of their Countrey; ſo particular Nations muſt ſometimes remit part of their Benefit, for the Good of many Nations.

True it is, that in particular Kingdomes and Common-wealths there be Civil and National Laws, and alſo Cuſtoms that obtain the Force of Laws: But yet ſuch Laws are ordained by ſome ſupreme Power, and the Cuſtoms are examined judged and allowed by the ſame ſupreme Power. Where there is no Supreme Power that extends over all or many Nations but only God himſelf, there can be no Laws made to bind Nations, but ſuch as are made by God himſelf: we cannot find that God made any Laws to bind Nations, but only the Moral Law; as for the Judicial Law, though it were ordained by God, yet it was not the Law of Nations, but of one Nation only, and fitted to that Commonwealth.

If any think that the Cuſtoms wherein many Nations do conſent, may be called the Law of Nations, as well as the Cuſtoms of any one Nation may be eſteemed for national Laws: They are to conſider that it is not the being of a Cuſtom that makes it lawful, for then all Cuſtoms, even evil Cuſtoms, would be lawful; but it is the Approbation of the ſupreme Power that gives a Legality to the Cuſtom: where there is no Supreme Power over many Nations, their Cuſtoms cannot be made legal.

The Doctrine of *Grotius* is, that *God immediately after the Creation did beſtow*

*upon Mankind in general a Right over things of inferiour Nature —— From whence it came to paſs, that preſently every man might ſnatch what he would for his own Uſe, and ſpend what he could, and ſuch an Univerſal Right was then in ſtead of Property; for what every one ſo ſnatched, another could not take from him but by Injury.*

How repugnant this Aſſertion of *Grotius* is to the Truth of Holy Scripture, Mr. *Selden* teacheth us in his *Mare Clauſum*, ſaying, that Adam *by Donation from God*, Gen. 1.28. *was made the general Lord of all things, not without ſuch a private Dominion to himſelf, as (without his Grant) did exclude his Children: and by Donation and Aſſignation, or ſome kind of Ceſſion (before he was dead, or left any Heir to ſucceed him) his Children had their diſtinct Territories by Right of private Dominion*: Abel *had his Flocks, and Paſtures for them*; Cain *had his Fields for Corn, and the Land of* Nod *where he built himſelf a City.*

*Lib.* 1. *c.* 4.

This Determination of Mr. *Selden's* being conſonant to the Hiſtory of the Bible, and to natural Reaſon, doth contradict the Doctrine of *Grotius*: I cannot conceive why Mr. *Selden* ſhould afterwards affirm, that *neither the Law of Nature, nor the Divine Law, do cammand or forbid either Communion of all things or private Dominion, but permitteth both.*

As

As for the general Community between *Noah* and his Sons, which Mr. *Selden* will have to be granted to them, *Gen.* 9. 2. the Text doth not warrant it; for although the Sons are there mentioned with *Noah* in the Bleſſing, yet it may beſt be underſtood with a Subordination or a Benediction in Succeſſion, the Bleſſing might truly be fulfilled, if the Sons either under, or after their Father enjoyed a Private Dominion: it is not probable that the private Dominion which God gave to *Adam*, and by his Donation, Aſſignation or Ceſſion to his Children was abrogated, and a Community of all things inſtituted between *Noah* and his Sons, at the time of the Flood: *Noah* was left the ſole heir of the World, why ſhould it be thought that God would diſ-inherit him of his Birth-right, and make him of all the men in the World, the only Tenant in Common with his Children? If the Bleſſing given to *Adam*, Gen. 1, 28. be compared to that given to *Noah* and his Sons, *Gen.* 9. 2. there will be found a conſiderable Difference between thoſe two Texts: In the Benediction of *Adam*, we find expreſſed a *ſubduing of the* Earth, *and a Dominion over the Creatures*, neither of which are expreſſed in the Bleſſing of *Noah* nor the Earth there once named, it is only ſaid, *The Fear of you ſhall be upon the Creatures, and into your hands are they delivered*; then immediately it follows, *Every moving thing ſhall be meat for you, as the green Herb*: The firſt Bleſſing gave *Adam Dominion* over the Earth and all Creatures, the latter allows *Noah* Liberty to uſe the living Creatures for Food: here is no Alteration or diminiſhing

niſhing of his Title to a Propriety of all things but an Enlargement onely of his Commons.

But, whether, with *Grotius*, Community came in at the Creation, or, with Mr. *Selden*, at the Flood, they both agree it did not long continue; *Sed veri non eſt ſimile hujuſmodi communionem diu obtinuiſſe*, is the confeſſion of Mr. *Selden*. It ſeems ſtrange that *Grotius* ſhould maintain, that Community of all things ſhould be by the Law of Nature, of which God is the Author; and yet ſuch Community ſhould not be able to continue: Doth it not derogate from the Providence of God Almighty, to ordain a Community which could not continue? or doth it make the Act of our Fore-fathers, in Abrogating the natural Law of Community, by introducing that of Propriety, to be a Sin of a high preſumption?

The prime Duties of the Second Table are converſant about the Right of Propriety: but if Propriety be brought in by a Humane Law (as *Grotius* teacheth) then the Moral Law depends upon the Will of man. There could be no Law againſt Adultery or Theft, if Women and all things were common.

Mr. *Selden* ſaith, that the Law of Nature, or of God, *nec vetuit, nec jubebat, ſed permiſit utrumque, tam nempe rerum communionem quàm privatum Dominium*. And yet for Propriety (which he terms *primæva rerum Dominia*) he teacheth, that *Adam received it from God, à Numine acceperat*: And for Community, he ſaith, *We meet with evident footſteps of the Community of things in that donation of God, by which* Noah *and his three Sons are made*

*Domini*

*Domini pro indiviſo rerum omnium.* Thus he makes the private Dominion of *Adam*, as well as the common Dominion of *Noah* and his Sons, to be both by the Will of God. Nor doth he ſhew how *Noah*, or his Sons, or their Poſterity, had any Authority to alter the Law of Community which was given them by God.

*In diſtributing Territories* (Mr. *Selden* ſaith) *the Conſent, as it were, of Mankind (paſſing their promiſe, which ſhould alſo bind their Poſterity) did intervene, ſo that men departed from their common Right of Communion of thoſe things which were ſo diſtributed to particular Lords or Maſters.* This Diſtribution by Conſent of Mankind, we muſt take upon Credit; for there is not the leaſt proof offered for it out of Antiquity.

How the Conſent of Mankind could bind Poſterity when all things were common, is a Point not ſo evident: where Children take nothing by Gift or by Deſcent from their Parents, but have an equal and common Intereſt with them, there is no reaſon in ſuch caſes, that the Acts of the Fathers ſhould bind the Sons.

I find no Cauſe why Mr. *Selden* ſhould call *Community a priſtine Right*; ſince he makes it but to begin in *Noah*, and to end in *Noah's* Children, or Grand-children at the moſt; for he confeſſeth the Earth, *à Noachidis ſeculis aliquot poſt diluvium eſſe diviſam.*

That ancient Tradition, which by Mr. *Seldens* acknowledgment hath obtained Reputation every where, ſeems moſt reaſonable, in that it tells us, that *Noah himſelf, as Lord of all, was Author of the diſtribution of the World,*

*World, and of private Dominion, and that by the appointment of an Oracle from God, he did confirm this Diſtribution by his laſt Will and Teſtament, which at his Death he left in the hands of his eldeſt Son* Sem, *and alſo warned all his Sons, that none of them ſhould invade any of their Brothers Dominions, or injure one another, becauſe from thence Diſcord and Civil War would neceſſarily follow.*

Many concluſions in *Grotius* his Book *de Jure Belli & Pacis*, are built upon the foundation of theſe two Principles.

1. The firſt is, That *Communis rerum uſus naturalis fuit.*

2. The ſecond is, that *Dominium quale nunc in uſu eſt, voluntas humana introduxit.*

Upon theſe two Propoſitions of natural Community and voluntary Propriety, depend divers Dangerous and Seditious concluſions, which are diſperſed in ſeveral places. In the fourth Chapter of the firſt Book, the Title of which Chapter is, *Of the War of Subjects againſt Superiours*; *Grotius* handleth the Queſtion, *Whether the Law of not reſiſting Superiours, do bind us in moſt grievous and moſt certain danger?* And his Determination is, that *this Law of not reſiſting Superiours, ſeems to depend upon the Will of thoſe men who at firſt joyned themſelves in a Civil Society, from whom the Right of Government doth come to them that govern; if thoſe had been at firſt asked, if their Will were to impoſe this burthen upon all, that they ſhould chooſe rather to dye, than in any caſe by Arms to repell the force of Superiours; I know not whether they would anſwer, that it was their Will, unleſs perhaps with*

*this*

*this addition, if Reſiſtance cannot be made but with the great diſturbance of the Commonwealth, and deſtruction of many Innocents.* Here we have his Reſolution, that in great and certain danger, men may reſiſt their Governours, if it may be without diſturbance of the Commonwealth: if you would know who ſhould be Judge of the greatneſs and certainty of the Danger, or how we may know it, *Grotius* hath not one word of it, ſo that for ought appears to the contrary, his Mind may be that every private man may be Judge of the Danger, for other Judge he appoints none; it had been a foul Fault in ſo deſperate a Piece of Service, as the reſiſting of Superiors, to have concealed the lawful Means, by which we may judge of the Greatneſs or Certainty of publick Danger, before we lift up our hands againſt Authority, conſidering how prone moſt of us are, to cenſure and miſtake thoſe things for great and certain Dangers, which in Truth many Times are no dangers at all, or at the moſt but very ſmall ones; and ſo flatter our ſelves, that by reſiſting our Superiours we may do our Country laudible Service, without Diſturbance of the Commonwealth, ſince the Effects of Sedition cannot be certainly judged of but by the Events only.

*Grotius* proceeds to anſwer an Objection againſt this Doctrine of reſiſting Superiors. *If* (ſaith he) *any man ſhall ſay that this rigid Doctrine of dying, rather then reſiſting any Injuries of Superiours, is no humane, but a divine Law: It is to be noted, that men at firſt, not by any Precept of God, but of their own Accord, led by Experience of the Infirmities of ſe-*

*ſeparated Families againſt Violence, did meet together in Civil Society, from whence Civil Power took beginning, which therefore St.* Peter *calls an humane Ordinance, although elſewhere it be called a divine Ordinance, becauſe God approveth the wholſome Inſtitutions of men; God in Approving a humane Law is to be thought to approve it as humane, and in a humane Manner.*

And again in another place he goeth further, and teacheth us, that *if the Queſtion happen to be concerning the Primitive Will of the People, it will not be amiſs for the People that now are, and which are accounted the ſame with them that were long ago, to expreſs their Meaning, in this matter, which is to be followed, unleſs it cetainly appear, that the People long ago willed otherwiſe.* lib. 2. c. 2.

For fuller Explication of his Judgment about reſiſting Superiours, he concludes thus: *The greater the thing is which is to be preſerved, the greater is the Equity which reacheth forth an Exception againſt the words of the Law: yet I dare not* (ſaith *Grotius*) *without Difference condemn either ſimple men or a leſſer part of the People, who in the laſt Refuge of* Neceſſity, *do ſo uſe this Equity, as that in the mean time, they do not forſake the Reſpect of the common Good.*

Another Doctrine of *Grotius* is, that *the Empire which is exerciſed by Kings, doth not ceaſe to be the Empire of the People; that Kings who in a lawful Order ſucceed thoſe who were elected, have the ſupreme Power by an uſufructuary Right only, and no Propriety.*

Furthermore he teacheth, that *the People may chooſe what Form of Government they pleaſe, and their*

*Will*

*Will is the Rule of Right.* Populus eligere poteſt qualem vult gubernationis formam, neque ex præſtantia formæ, ſed ex voluntate jus metiendum eſt. *lib.* 1. *c.* 3.

Alſo, that *the People chooſing a King may reſerve ſome Acts to themſelves, and may beſtow others upon the King, with full Authority, if either an expreſs Partition be appointed, or if the People being yet free do command their future King, by way of a ſtanding Command, or if any thing be added by which it may be underſtood, that the King may be compelled or elſe puniſhed.*

In theſe Paſſages of *Grotius* which I have cited, we find evidently theſe Doctrines.

1. *That Civil Power depends on the Will of the People.*

2. *That private men or petty Multitudes may take up Arms againſt their Princes.*

3. *That the lawfulleſt Kings have no Propriety in their Kingdoms, but an uſufructuary Right only: as if the People were the Lords, and Kings but their Tenants.*

4. *That the Law of Not reſiſting Superiours, is a humane Law, depending on the Will of the People at firſt.*

5. *That the Will of the firſt People, if it be not known, may be expounded by the People that now are.*

No

No Doubt but *Grotius* foreſaw what Uſes the People might make of theſe Doctrines, by concluding, if the chief Power be in the People, that then it is lawful for them to compel and puniſh Kings as oft as they miſuſe their Power: Therefore he tells us, he *rejects the Opinion of them, who every where and without Exception will have the chief Power to be ſo the Peoples, that it is lawful for them to compel and puniſh Kings as oft as they miſuſe their Power*; and *this Opinion* he confeſſeth *if it be altogether received, hath been and may be the Cauſe of many Evils.* This cautelous Rejection qualified with theſe Terms of *every where without Exception*, and *altogether*, makes but a mixt Negation, partly *negative*, and partly *affirmative* (which our Lawyers call a *negative Repugnant*) which brings forth this modal Propoſition, *that in ſome Places with Exception, and in ſome ſort the People may compel and puniſh their Kings.*

But let us ſee how *Grotius* doth refute the general Opinion, *that People may correct* Kings. He frames his Argument in theſe words, *It is lawful for every man to yield himſelf to be a private Servant to whom he pleaſe. What ſhould hinder, but that alſo it may be lawful for a free People ſo to yield themſelves to one or more, that the Right of governing them be fully ſet over without retaining any part of the Right? and you muſt not ſay, That this may not be preſumed, for we do not now ſeek, what in a doubtful caſe may be preſumed, but what by Right may be done.* Thus far is the Argument, in which the moſt that is proved (if we gratifie him, and yield his whole Argument for good) is this, that

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*the People may grant away their Power without retaining any part.* But what is this to what the People have done? for though the People may give away their Power without Reſervation of any part to themſelves; yet if they have not ſo done, but have reſerved a part, *Grotius* muſt confeſs, that the People may compel and puniſh their Kings if they tranſgreſs: ſo that by his Favour, the Point will be, not what by Right may be done, but what in this doubtful caſe hath been done, ſince by his own Rule *it is the Will and Meaning of the firſt People that joyned in Society*, that muſt regulate the Power of their Succeſſours.

But on *Grotius* ſide it may be urged, that in all Preſumption the People have given away their whole Power to Kings, unleſs they can prove they have reſerved a part; for if they will have any Benefit of a Reſervation or Exception, it lies on their part to prove their Exception, and not on the Kings Part who are in Poſſeſſion.

This Anſwer, though in it ſelf it be moſt juſt and good; yet of all men *Grotius* may not uſe it. For he ſaves the People the Labour of proving the primitive Reſervation of their Forefathers, by making the People that now are competent Expoſitors of the meaning of thoſe firſt Anceſtors, who may juſtly be preſumed, not to have been either ſo improvident for themſelves, or ſo negligent of all their Poſterity, when by the Law of Nature they were free and had all things common, at an Inſtant with any Condition or Limitation to give away that Liberty and Right of Community,

and

and to make themſelves and their Children eternally ſubject to the Will of ſuch Governours as might miſuſe them without Controul.

On the behalf of the People, it may be further anſwered to *Grotius*, that although our Anceſtors had made an abſolute Grant of their Liberty, without any Condition expreſſed, yet it muſt be neceſſarily implyed, that it was upon condition to be well-governed, and that the Non-performance of that implyed Condition, makes the Grant void; Or, if we will not allow an implicit Condition, then it may be ſaid, that the Grant in it ſelf was a void Grant, for being unreaſonable, and a violation of the Law of Nature, without any valuable Conſideration. What ſound Reply *Grotius* can return to ſuch Anſwers, I cannot conceive, if he keep himſelf to his firſt Principle of natural Community. As *Grotius*'s Argument againſt the People is not ſound, ſo his Anſwer to the Argument that is made for the People, is not ſatisfactory. It is objected, that *he that ordains, is above him that is ordained.* *Grotius* anſwers, *Verum duntaxat eſt in ea conſtitutione cujus effectus perpetuò pendet à voluntate conſtituentis, non etiam in ea quæ ab initio eſt voluntatis, poſtea verò effectum habet neceſſitatis, quomodo mulier virum ſibi conſtituit, cui parere ſemper habet neceſſe.* The Reply may be, that by *Grotius*'s former Doctrine the very Effect of the Conſtitution of Kings by the People, depends perpetually upon the Will of them that Conſtitute, and upon no other Neceſſity: he will not ſay, that it is by any neceſſity of the Law of Nature, or by any poſitive Law of God; he teach-

eth,

eth, that *non Dei præcepto, ſed ſponte*, men entred into Civil Society, that it is an Humane Ordinance, that God doth onely approve it *ut humanum*, and *humano modo*. He tells us further, that *Populus poteſt eligere qualem vult gubernationis formam, & ex voluntate jus metiendum eſt*; that the People may give the King *as little Power as they will, and for as little time as they pleaſe, that they may make temporary Kings, as Dictators and Protectors: jus quovis tempore revocabile, id eſt precarium*; as the *Vandals* in *Africa*, and the *Goths* in *Spain*, would depoſe their Kings as oft as they diſpleaſed them, *horum enim actus irriti poſſunt reddi ab his qui poteſtatem revocabiliter dederunt, ac proinde non idem eſt effectus nec jus idem.* Here he doth teach in plain words, the Effect doth depend upon the Will of the People. By this we may judge how improperly he uſeth the inſtance of a Woman, that appoints her ſelf a Husband, whom ſhe muſt alwayes neceſſarily obey, ſince the neceſſity of the continuance of the Wives obedience depends upon the Law of God, which hath made the Bond of Matrimony indiſſolvable. *Grotius* will not ſay the like for the continuance of the Subjects obedience to the Prince, neither will he ſay that Women may chooſe Husbands, as he tells us the People may chooſe Kings, by giving their Husbands as little Power, and for as little a Time as they pleaſe.

Next, it is objected, that *Tutors who are ſet over Pupils may be removed, if they abuſe their Power.* *Grotius* anſwers, *In tutore hoc procedit qui ſuperiorem habet, at in imperiis quia progreſſus non datur in infi-*

*nitum, omnino in aliqua perſona aut cœtu conſiſtendum eſt: We muſt ſtay in ſome one Perſon, or in a Multitude, whoſe faults (becauſe they have no ſuperiour Judge above them) God hath witneſſed that he will have a particular care of, either to revenge them, if he judge it needful, or to tolerate them, either for Puniſhment, or Tryal of the People.* It is true, in Kingdomes we cannot proceed *in infinitum*, yet we may, and muſt go to the higheſt, which by *Grotius* his Rule is the People, becauſe they firſt made Kings, ſo that there is no need to ſtay *in aliqua perſona*, but in *cœtu*, in the People, ſo that by his Doctrine Kings may be puniſhed by the People, but the faults of the People muſt be left to the Judgment of God.

I have briefly preſented here the deſperate Inconveniences which attend upon the Doctrine of *the natural freedom and community of all things*; theſe and many more Abſurdities are eaſily removed, if on the contrary we maintain the *natural and private Dominion of Adam*, to be the fountain of all Government and Propriety: And if we mark it well, we ſhall find that *Grotius* doth in part grant as much; The ground why thoſe that now live do obey their Governours, is the Will of their Fore-fathers, who at the firſt ordained Princes, and, in obedience to that Will, the Children continue in ſubjection; this is according to the mind of *Grotius*: ſo that the Queſtion is not *Whether Kings have a fatherly Power over their Subjects, but how Kings came firſt by it.* *Grotius* will have it, that our Fore-fathers being all free, made an Aſſignment of their Power to Kings; the other opinion

opinion denies any ſuch general freedom of our Fore-fathers, but derives the Power of Kings from the Original Dominion of *Adam*.

This natural Dominion of *Adam* may be proved out of *Grotius* himſelf, who teacheth, that *generatione jus acquiritur Parentibus in Liberos*, and that *naturally no other can be found, but the Parents to whom the Government ſhould belong, and the Right of Ruling and Compelling them doth belong to Parents.* And in another place he hath theſe words, ſpeaking of the firſt Commandment, *Parentum nomine, qui naturales ſunt Magiſtratus, etiam alios Rectores par eſt intelligi, quorum authoritas Societatem humanam continet:* and if Parents be natural Magiſtrates, Children muſt needs be born natural Subjects.

But although *Grotius* acknowledge Parents to be natural Magiſtrates, yet he will have it, that Children, when they come to full age, and are ſeparated from their Parents, are free from natural Subjection. For this he offers proof out of *Ariſtotle*, and out of Scripture. Firſt, for *Ariſtotle*, we muſt note, he doth not teach, that every ſeparation of Children of full age, is an Obtaining of liberty, as if that men when they come to years, might voluntarily ſeparate themſelves, and caſt off their natural Obedience; but *Ariſtotle* ſpeaks onely of a paſſive Separation; for he doth not ſay that Children are ſubject to Parents *until they do ſeparate, but* he ſaith, *until they be ſeparated*, χωρισθῶσι, in the Verb of the Paſſive Voice. That is, until by Law they be ſeparated: for the Law (which is nothing elſe but the Will of him that hath

the Power of the Supreme Father ) doth in many caſes, for the publick Benefit of Society, free Children from ſubjection to the Subordinate Parent, ſo that the natural Subjection by ſuch Emancipation of Children, is not extinguiſhed, but onely aſſumed and regulated by the Parent paramount.

Secondly, *Grotius* cites *Numb.* 30. to prove that *the Power of the Fathers over the Sons and Daughters, to diſſolve their Vows, was not perpetual, but during the time only whilſt the Children were part of the Fathers Family.* But if we turn to the Chapter, we may find that *Grotius* either deceives himſelf,or us; for there is not one word in that Chapter concerning the Vows of Sons, but of Daughters only, being in their Father's Family; and the Being of the Daughter in the Father's Houſe,meaneth only the Daughter's being a Virgin, and not married, which may be gathered by the Argument of the whole Chapter, which taketh particular order for the Vows of Women of all Eſtates. Firſt, for Virgins, in the third verſe. Secondly, for Wives in general, in the ſixth verſe. Thirdly, for Widows, and Women divorced, in the ninth verſe. There is no Law for Virgins out of their Father's houſes; we may not think they would have been omitted, if they had been free from their Fathers; we find no freedom in the Text for Women, till after Marriage: And if they were married, though they were in their Father's houſes, yet the Fathers had no power of their Vows, but their Husbands.

If, by the Law of Nature, departure from the Fathers houſe had emancipated Children, why doth the Civil Law, contrary to the Law of Nature,

ture, give Power and Remedy to Fathers for to recover by Action of Law their Children that depart, or are taken away from them without their Conſent? Without the Conſent of Parents the Civil Law allows no emancipation.

Concerning Subjection of Children to Parents, *Grotius* diſtinguiſheth three ſeveral times.

The firſt is the time of *Imperfect Judgment.*

The ſecond is the time of *Perfect Judgment*: but *whilſt the Son remains part of the Father's Family.*

The third is, *the time after he hath departed out of his Father's Family.*

In the firſt time he ſaith, *All the actions of Children are under the dominion of the Parents.*

During the ſecond time, *when they are of the age of mature Judgment, they are under their Father's Command in thoſe actions onely, which are of moment for their Parents Family. In other actions the Children have a Power or moral Faculty of doing, but they are bound in thoſe alſo to ſtudy alwayes to pleaſe their Parents. But ſince this Duty is not by force of any moral Faculty, as thoſe former are, but onely of Piety, Obſervance, and Duty of repaying Thanks; it doth not make any thing void which is done againſt it, as neither a gift of any thing is void, being made by any Owner whatſoever, againſt the rules of Parſimony.*

*In both theſe times, the Right of Ruling and Compelling is* (as *Grotius* acknowledgeth) *comprehended ſo far forth as Children are to be compelled to their Duty, or amended; although the Power of a Parent doth ſo follow the perſon of a Father, that it cannot be*

*pulled away, and transferred upon another, yet the Father may naturally pawn, or alſo ſell his Son, if there be need.*

In the third time he ſaith, *the Son is in all things Free, and of his own Authority: always that Duty remaining of Piety and Obſervance, the cauſe of which is perpetual.* In this triple diſtinction, though *Grotius* allow Children in ſome caſes during the ſecond, and in all caſes during the third time to be free, and of their own Power, by a moral Faculty: yet, in that he confeſſeth, *in all caſes Children are bound to ſtudy always to pleaſe their Parents out of Piety and Duty, the cauſe of which*, as he ſaith, *is perpetual*: I cannot conceive, how in any caſe Children can naturally have any Power or moral Faculty of doing what they pleaſe without their Parents leave, ſince they are alwayes bound to ſtudy to pleaſe their Parents. And though by the Laws of ſome Nations, Children, when they attain to years of Diſcretion, have Power and Liberty in many actions; yet this Liberty is granted them by Poſitive and Humane Laws onely, which are made by the Supreme Fatherly Power of Princes, who Regulate, Limit, or Aſſume the Authority of inferiour Fathers, for the publick Benefit of the Commonwealth: ſo that naturally the Power of Parents over their Children never ceaſeth by any Separation; but only by the Permiſſion of the tranſcendent Fatherly power of the Supreme Prince, Children may be diſpenſed with, or privileged in ſome caſes, from obedience to ſubordinate Parents.

Touching

Touching the Point of diſſolving the Vows of Children, *Grotius* in his laſt Edition of his Book hath corrected his firſt: for in the firſt he teacheth, that *the Power of the Father was greater over the Daughter dwelling with him, than over the Son; for her Vow he might make void, but not his*: But inſtead of theſe words, in his laſt Edition, he ſaith, that *the Power over the Son or Daughter to diſſolve Vows, was not perpetual, but did indure as long as the Children were a part of their Fathers Family.* About the meaning of the Text out of which he draws this Concluſion, I have already ſpoken.

Three wayes *Grotius* propoundeth, whereby *Supreme Power* may be had.

Firſt, By *full Right of Propriety.*

Secondly, By an *Uſufructuary Right.*

Thirdly, By a *Temporary Right.*

The *Roman* Dictators, ſaith he, *had Supreme Power by a Temporary Right; as well thoſe Kings who are firſt Elected, as thoſe that in a lawful Right ſucceed to Kings elected, have Supreme Power by an uſufructuary Right: ſome Kings that have got Supreme Power by a juſt War, or into whoſe Power ſome People, for avoiding a greater Evil, have ſo yielded themſelves, as that they have excepted nothing, have a full Right of Propriety.*

Thus we find but two means acknowledged by *Grotius*, whereby *a King may obtain a full Right of Propriety in a Kingdome: That is, either by a juſt War, or by Donation of the People.*

How a War can be juſt without a precedent Title in the Conquerour, *Grotius* doth not ſhew; and if the Title onely make the War juſt, then no

other Right can be obtained by War, than what the Title bringeth; for a juſt War doth onely put the Conquerour in poſſeſſion of his old Right, but not create a New. The like which *Grotius* ſaith of Succeſſion, may be ſaid of War. *Succeſſion* (ſaith he) *is no Title of a Kingdome, which gives a Form to the Kingdom, but a Continuation of the Old; for the Right which began by the Election of the Family, is continued by Succeſſion; wherefore, ſo much as the firſt Election gave, ſo much the Succeſſion brings.* So to a Conquerour that hath a Title, War doth not give, but put him in poſſeſſion of a Right: and except the Conquerour had a full Right of Propriety at firſt, his Conqueſt cannot give it him: for if originally he and his Anceſtors had but an uſufructuary Right, and were outed of the poſſeſſion of the Kingdom by an Uſurper: here, though the Re-conqueſt be a moſt juſt War, yet ſhall not the Conquerour in this caſe gain any full Right of Propriety, but muſt be remitted to his uſufructuary Right onely: for what Juſtice can it be, that the Injuſtice of a third Perſon, an Uſurper, ſhould prejudice the People, to the deveſting of them of that Right of Propriety, which was reſerved in their firſt Donation to their Elected King, to whom they gave but an uſufructuary Right, as *Grotius* conceiveth? Wherefore it ſeems impoſſible, that there can be a juſt War, whereby a full Right of Propriety may be gained, according to *Grotius*'s Principles. For if a King come in by Conqueſt, he muſt either conquer them that have a Governour, or thoſe People that have none: if they have no Governour, then they are a free Peo-

People, and ſo the War will be unjuſt to conquer thoſe that are Free, eſpecially if the Freedom of the People be by the primary Law of Nature, as *Grotius* teacheth: But if the People conquered have a Governour, that Governour hath either a Title or not; If he have a Title, it is an unjuſt War that takes the Kingdom from him: If he have no Title, but only the Poſſeſſion of a Kingdom, yet it is unjuſt for any other man, that wants a Title alſo, to conquer him that is but in poſſeſſion; for it is a juſt Rule, that where *the Caſes are alike, he that is in Poſſeſſion is in the better condition*; *In pari cauſa poſſidentis melior conditio.* Lib. 2. c. 23. And this by the Law of Nature, even in the judgment of *Grotius*. But if it be admitted, that he that attempts to conquer have a Title, and he that is in poſſeſſion hath none: here the Conqueſt is but in nature of a poſſeſſory Action, to put the Conquerour in poſſeſſion of a primer Right, and not to raiſe a new Title; for War begins where the Law fails: *Ubi Judicia deficiunt incipit Bellum.* Lib. 2. c. 1. And thus, upon the matter, I cannot find in *Grotius*'s Book *de Jure Belli*, how that any Caſe can be put wherein *by a juſt War a man may become a King*, pleno Jure Proprietatis.

All Government and Supreme Power is founded upon publick Subjection, which is thus defined by *Grotius*. *Publica Subjectio eſt, qua ſe Populus homini alicui, aut pluribus hominibus, aut etiam populo alteri in ditionem dat.* Lib. 2. c. 5. If Subjection be the Gift of the People, how can Supreme Power, *pleno Jure*, in full Right, be got by a juſt War?

As

As to the other means whereby Kings may get Supreme Power in full Right of Propriety, *Grotius* will have it to be, *when ſome People, for avoiding a greater Evil, do ſo yield themſelves into anothers Power, as that they do except nothing.* It would be conſidered how, without War, any People can be brought into ſuch danger of Life, as that becauſe they can find no other wayes to defend themſelves, or becauſe they are ſo preſſed with Poverty, as they cannot otherwiſe have means to ſuſtain themſelves, they are forced to renounce all Right of Governing themſelves, and deliver it to a King.

But if ſuch a Caſe cannot happen, but by a War onely, which reduceth a People to ſuch terms of Extremity, as compells them to an abſolute Abrenuntiation of all Sovereignty: then War, which cauſeth that neceſſity, is the prime means of extorting ſuch Sovereignty, and not the free Gift of the People, who cannot otherwiſe chooſe but give away that Power which they cannot keep.

Thus, upon the Reckoning, the two ways propounded by *Grotius*, are but one way; and that one way, in concluſion, is no way whereby Supreme Power may be had in full Right of Propriety. His two ways are, a *Juſt War*, or a *Donation of the People*; a juſt War cannot be without a Title, no Title without the Donation of the People, no Donation without ſuch a Neceſſity as nothing can bring upon the Donors but a War. So that howſoever *Grotius* in words acknowledges that Kings may have a full Right of Propriety, yet by conſequence he denies it, by ſuch circular Suppoſitions, as by coincidence deſtroy each other, and in

effect

effect he leaves all People a Right to plead in Bar againſt the Right of Propriety of any Prince, either *per minas*, or *per dures*.

Many times, ſaith *Grotius*, it happens, that War is grounded upon *Expletive Juſtice*, *Juſtitiam Expletricem*, which is, *when a man cannot obtain what he ought, he takes that which is as much in value, which in moral Eſtimation is the ſame.* For in War, when the ſame Province cannot be recovered, to the which a man hath a Title, he recovers another of the like value. This recovery cannot give a full right of Propriety: becauſe the Juſtice of ſuch a War reacheth no farther than to a compenſation for a former Right to another thing, and therefore can give no new Right.

I am bound to take notice of a Caſe put by *Grotius*, amongſt thoſe Cauſes which he thinks ſhould move the People to renounce all their Right of Governing, and give it to another. *It may alſo happen* (ſaith he) *that a Father of a Family poſſeſſing large Territories, will not receive any man to dwell within his Land upon any other condition.* And in another place, he ſaith, that *all Kings are not made by the People, which may be ſufficiently underſtood by the Examples of a Father of a Family receiving Strangers under the Law of Obedience.* In both theſe Paſſages we have a cloſe and curt acknowledgment, that a *Father of a Family may be an abſolute King over Strangers, without Choice of the People*; now I would know whether ſuch Fathers of Families have not the ſame abſolute Power over their own Children, without the Peoples Choice, which he allows them over Strangers:

if

if they have, I cannot but call them Abſolute proprietary Kings, though *Grotius* be not willing to give them that Title in plain terms: for indeed to allow ſuch Kings, were to condemn his own Principle, that *Dominion came in by the Will of the People*; and ſo conſequently to overthrow his *Uſufructuary Kings*, of whom I am next to ſpeak.

*Grotius* ſaith, that *the Law of Obeying, or Reſiſting Princes, depends upon the Will of them who firſt met in Civil Society, from whom Power doth flow to Kings*: And, that *men of their own accord came together into Civil Society, from whence ſprings Civil Power, and the People may chooſe what Form of Government they pleaſe.* Upon theſe Suppoſitions, he concludes, that Kings, elected by the People, have but an *Uſufructuary Right*, that is, a Right to take the Profit or Fruit of the Kingdom, but not a Right of Propriety or Power to alienate it. But why doth he call it an *Uſufructuary Right?* It ſeems to me a term too mean or baſe to expreſs the Right of any King, and is derogatory to the Dignity of Supreme Majeſty. The word *Uſufructuary* is uſed by the Lawyers, to ſignifie him that hath the Uſe, Profit or Fruit of ſome Corporal thing, that may be uſed without the Property; for of *fungible things* (*res fungibiles*, the *Civilians* call them) that are ſpent or conſumed in the Uſe, as Corn, Wine, Oyl, Money, there cannot be an *Uſufructuary Right.*

It is to make a Kingdom all one with a Farm, as if it had no other Uſe but to be let out to him that can make moſt of it: whereas, in truth, it is the

the Part and Duty of a King to govern, and he hath a Right ſo to do, and to that End Supreme Power is given unto him; the taking of the Profit, or making Uſe of the Patrimony of the Crown, is but as a means onely to enable him to perform that great work of Government.

Beſides, *Grotius* will not onely have an elected King, but alſo his lawful Succeſſors, to have but an *Uſufructuary Right*, ſo that though a King hath a Crown to him and to his Heirs, yet he will allow him no Propriety, becauſe he hath no Power to alienate it; for he ſuppoſeth the primary Will of the People to have been to beſtow Supreme Power to go in Succeſſion, and not to be alienable; but for this he hath no better proof than a naked preſumption: *In Regnis quæ Populi voluntate delata ſunt concedo non eſſe præſumendum eam fuiſſe Populi voluntatem, ut alienatio Imperii ſui Regi permitteretur.*

But though he will not allow Kings a Right of Propriety in their Kingdoms, yet a Right of Propriety there muſt be in ſome body, and in whom but in the People? for he ſaith, *the Empire which is exerciſed by Kings, doth not ceaſe to be the Empire of the People.* His meaning is, the Uſe is the King's, but the Property is the Peoples.

But if the Power to alienate the Kingdom be in him that hath the Property, this may prove a comfortable Doctrine to the People: but yet to allow a Right of Succeſſion in Kings, and ſtill to reſerve a Right of Property in the People, may make ſome contradiction: for the Succeſſion muſt either hinder the Right of Alienation which is in the People,

People, or the Alienation muſt deſtroy that Right of Succeſſion, which, by *Grotius*'s confeſſion, may attend upon elected Kings.

Though *Grotius* confeſs, that Supreme Power be *Unum quiddam, and in it ſelf indiviſible*, yet he ſaith, *Sometimes it may be divided either by parts potential, or ſubjunctive.* I take his meaning to be, that the Government or the Governed may be divided: an Example he gives of the *Roman* Empire, which was divided, into the *Eaſt* and *Weſt*: but whereas he ſaith, *fieri poteſt*, &c. *It may be, the People chooſing a King, may reſerve ſome Actions to themſelves, and in others they may give full power to the King*: The Example he brings out of *Plato* of the *Heraclides* doth not prove it, and it is to dream of ſuch a Form of Government as never yet had name, nor was ever found in any ſettled Kingdom, nor cannot poſſibly be without ſtrange Confuſion.

If it were a thing ſo voluntary, and at the pleaſure of men, when they were free, to put themſelves under Subjection, why may they not as voluntarily leave Subjection when they pleaſe, and be free again? If they had a liberty to change their Natural Freedom, into a voluntary Subjection, there is ſtronger reaſon that they may change their voluntary Subjection into natural Freedom, ſince it is as lawful for men to alter their Wills as their Judgments.

Certainly, it was a rare felicity, that all the men in the World at one inſtant of time ſhould agree together in one mind, to change the Natural Community of all things into Private Dominion: for

for without ſuch an unanimous Conſent, it was not poſſible for Community to be altered: for, if but one man in the World had diſſented, the Alteration had been unjuſt, becauſe that Man by the Law of Nature had a Right to the common Uſe of all things in the World; ſo that to have given a Propriety of any one thing to any other, had been to have robbed him of his Right to the common Uſe of all things. And of this Judgment the Jeſuit *Lud. Molina* ſeems to be, in his Book *De Juſtitia*, where he ſaith, *Si aliquis de cohabitantibus*, &c. *If one of the Neighbours will not give his Conſent to it, the Commonwealth ſhould have no Authority over him, becauſe then every other man hath no Right or Authority over him, and therefore can they not give Authority to the Commonwealth over him.*

If our firſt Parents, or ſome other of our Forefathers did voluntarily bring in Propriety of Goods, and Subjection to Governours, and it were in their power either to bring them in or not, or having brought them in, to alter their minds, and reſtore them to their firſt condition of Community and Liberty; what reaſon can there be alleged that men that now live ſhould not have the ſame power? So that if any one man in the World, be he never ſo mean or baſe, will but alter his Will, and ſay, he will reſume his Natural Right to Community, and be reſtored unto his Natural Liberty, and conſequently take what he pleaſe, and do what he liſt; who can ſay that ſuch a man doth more than by Right he may? And then it will be lawful for every man, when he pleaſe,

to

to diſſolve all Government, and Deſtroy all Property.

Whereas *Grotius* ſaith, *That by the Law of Nature all things were at firſt Common*; and yet teacheth, that *after Propriety was brought in, it was againſt the Law of Nature to uſe Community*; He doth thereby not onely make the Law of Nature changeable, which he ſaith God cannot do, but he alſo makes the Law of Nature contrary to it ſelf.

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OBSER-

# THE ANARCHY OF A Limited or Mixed MONARCHY.

# THE PREFACE.

*WE do but flatter our ſelves, if we hope ever to be governed without an Arbitrary Power. No: we miſtake, the Queſtion is not, Whether there ſhall be an Arbitrary Power; but the only point is, Who ſhall have that Arbitrary Power, whether one man or many? There never was, nor ever can be any People govern'd without a Power of making Laws, and every Power of making Laws muſt be Arbitrary: For to make a Law according to Law, is* Contradictio in adjecto. *It is generally confeſſed, that in a Democracy the Supreme or Arbitrary Power of making Laws is in a multitude; and ſo in an Ariſtocracy the like Legiſlative or Arbitrary Power is in a few, or in the Nobility. And therefore by a neceſſary Conſequence, in a Monarchy the ſame Legiſlative Power muſt be in one; according to the Rule of* Ariſtotle,

ſtotle, *who ſaith*, Government is in One, or in a Few, or in Many.

*This antient Doctrine of Government, in theſe latter days hath been ſtrangely refined by the Romaniſts, and wonderfully improved ſince the Reformation, eſpecially in point of Monarchy, by an Opinion*, That the People have Originally a Power to create ſeveral ſorts of Monarchy, to limit and compound them with other Forms of Government, at their pleaſure.

*As for this natural Power of the People, they finde neither Scripture, Reaſon, or Practice to juſtifie it: For though ſeveral Kingdoms have ſeveral and diſtinct Laws one from another; yet that doth not make ſeveral ſorts of Monarchy: Nor doth the difference of obtaining the Supreme Power, whether by Conqueſt, Election, Succeſſion, or by any other way, make different ſorts of Government. It is the difference only of the Authors of the Laws, and not of the Laws themſelves, that alters the Form of Government; that is, whether one man, or more than one, make the Laws.*

*Since the growth of this new Doctrine*, Of the Limitation and Mixture of Monarchy, *it is moſt apparent, that* Monarchy *hath been crucified (as it were) between two*

*two Thieves, the* Pope *and the* People; *for what* Principles *the* Papiſts *make uſe of for the Power of the* Pope *above Kings, the very ſame, by blotting out the word* Pope, *and putting in the word* People, *the* Plebiſts *take up to uſe againſt their Soveraigns.*

*If we would truely know what* Popery *is, we ſhall finde by the Laws and Statutes of the Realm, that the main, and indeed the only Point of* Popery, is the alienating and withdrawing of Subjects from their Obedience to their Prince, to raiſe Sedition and Rebellion: *If* Popery *and* Popularity *agree in this Point, the* Kings *of* Chriſtendome, *that have ſhaken off the* Power *of the* Pope, *have made no great bargain of it, if in place of one Lord abroad, they get many Lords at home within their own Kingdoms.*

*I cannot but reverence that Form of Government which was allowed and made uſe of for God's own People, and for all other Nations. It were Impiety, to think that God, who was careful to appoint Judicial Laws for his choſen People, would not furniſh them with the beſt Form of Government: or to imagine that the Rules given in divers places in the Goſpel, by*

*our bleſſed Saviour and his Apoſtles, for Obedience to Kings, ſhould now, like Almanacks out of date, be of no uſe to us; becauſe it is pretended,* We have a Form of Government now, *not once thought of in thoſe days. It is a ſhame and ſcandal for us Chriſtians, to ſeek the Original of Government from the Inventions or Fictions of Poets, Orators, Philoſophers, and Heathen Hiſtorians, who all lived thouſands of Years after the* Creation, *and were (in a manner) ignorant of it: and to neglect the Scriptures, which have with more Authority moſt particularly given us the* true Grounds *and* Principles of Government.

*Theſe Conſiderations cauſed me to ſcruple this Modern piece of Politicks, touching* Limited *and* Mixed Monarchy: *and finding no other that preſented us with the nature and means of* Limitation *and* Mixture, *but an* Anonymus *Authour; I have drawn a few brief Obſervations upon the moſt conſiderable part of his* Treatiſe, *in which I deſire to receive ſatisfaction from the Authour himſelf, if it may be, according to his promiſe in his* Preface; *or if not from him, from any other for him.*

THE

# THE ANARCHY Of a Limited or Mixed MONARCHY.

THere is ſcarce the meaneſt man of the multitude, but can now in theſe days tell us that the Government *of the Kingdome of* England *is a* LIMITED *and* MIXED *Monarchy*: And it is no marvail, ſince all the diſputes, and arguments of theſe diſtracted times both from the Pulpit and the Preſſe to tend and end in this Concluſion.

The Author of the Treatiſe of Monarchy hath copiouſly handled the nature and manner of *Limited* and *Mixed* Monarchy, and is the firſt and onely man (that I know) hath undertaken the task of deſcribing it; others onely mention it, as taking it for granted.

Doctor *Ferne* gives the Author of this Treatiſe of Monarchy this teſtimony, that *the Mixture of Government is more accurately delivered and urged by this Treatiſe than by the Author* P.3.

*of the Fuller Anſwer.* And in another place Doctor *Ferne* ſaith, he allows his *diſtinction of Monarchy into Limited and Mixed.* P.13.

I have with ſome diligence looked over this Treatiſe, but cannot approve of theſe diſtinctions which he propounds; I ſubmit the reaſons of my diſlike to others judgements. I am ſomewhat confident that his doctrine of *Limited and Mixed Monarchy* is an opinion but of yeſterday, and of no antiquity, a meer innovation in policy, not ſo old as *New England*, though calculated properly for that Meridian. For in his firſt part of the Treatiſe which concerns Monarchy in General, there is not one proof, text, or example in Scripture that he hath produced to juſtifie his conceit of *Limited* and *Mixed* Monarchy. Neither doth he afford us ſo much as one paſſage or reaſon out of *Ariſtotle*, whoſe books of *Politicks*, and whoſe natural reaſons are of greateſt authority and credit with all rational men, next to the ſacred Scripture: Nay, I hope I may affirm, and be able to prove, that *Ariſt.* doth confute both *limited* and *mixed* Monarchy, howſoever Doctor *Ferne* P.6. think theſe new opinions to be raiſed upon *Ariſt.* principles. As for other Polititians or Hiſtorians, either divine or humane, ancient or modern, our Author brings not one to confirm his opinions; nor doth he, nor can he ſhew that ever any Nation or people were governed by a *limited* or *mixed* Monarchy.

*Machivel* is the firſt in Chriſtendome that I can find that writ of a *Mixed Government*, but not one ſyllable of a *Mixed Monarchy:* he, in his diſcourſes or diſputations upon the Decades of *Livy*, falls ſo enamor-

enamored with the Roman Common-wealth, that he thought he could never ſufficiently grace that popular government, unleſs he ſaid, there was ſomething of Monarchy in it: yet he was never ſo impudent as to ſay, it was a *mixed* Monarchy. And what *Machivel* hath ſaid for *Rome*, the like hath *Contarene* for *Venice*. But *Bodin* hath layed open the errors of both theſe, as alſo of *Polybius*, and ſome few others that held the like opinions. As for the Kingome of *England*, if it have found out a form of Government (as the Treatiſe layeth it down) of ſuch perfection as never any people could; It is both a glory to the Nation, and alſo to this Author, who hath firſt decipher'd it.

I now make my approach to the Book it ſelf: The title is, *A Treatiſe of Monarchy*. The firſt part of it is, of *Monarchy in General*: Where firſt, I charge the Author, that he hath not given us any definition or deſcription of Monarchy in General: for by the rules of method he ſhould have firſt defined, and then divided: for if there be ſeveral ſorts of Monarchy, then in ſomething they muſt agree, which makes them to be Monarchies; and in ſomething they muſt diſagree and differ, which makes them to be ſeveral ſorts of Monarchies. In the firſt place he ſhould have ſhewed us in what they all agreed, which muſt have been a definition of Monarchy in General, which is the foundation of the Treatiſe; and except that be agreed upon, we ſhall argue upon we know not what. I preſs not this main omiſſion of our Author out of any humour of wrangling but becauſe I am confident that had he pitched upon any definition of Monarchy in Gene-

General, his own definition would have confuted his whole Treatiſe: Beſides, I find him pleaſed to give us a handſome definition of *Abſolute Monarchy*, from whence I may infer, that he knew no other definition that would have fitted all his other ſorts of Monarchy; it concerned him to have produced it, leſt it might be thought there could be no Monarchy but Abſolute.

What our Author hath omitted, I ſhall attempt to ſupply, and leave to the ſcanning. And it ſhall be a real as well as nominal definition of Monarchy. *A Monarchy is the Government of one alone.* For the better credit of this definition, though it be able to maintain it ſelf, yet I ſhall deduce it from the principles of our Author of the Treatiſe of Monarchy.

We all know that this word *Monarch* is compounded of two Greek words, μόν☉ and ἀρχεῖν. ἀρχεῖν is *imperare*, to *govern and rule*; μόν☉ ſignifies *one alone.* The underſtanding of theſe two words may be picked out of our Author. Firſt, for Government he teacheth us, it is *Poteſtatis exercitium, the exerciſe of a moral power*; next he grants us, that *every Monarch* (even his *limited* Monarch) *muſt have the Supream power of the State in him, ſo that his power muſt no way be limited by any power above his; for then he were not a Monarch, but a ſubordinate Magiſtrate.* Here we have a fair confeſſion of a ſupream unlimited power in his *limited Monarch*: if you will know what he means by theſe words *ſupream power*, turn to his 26 page, there you will finde, *Supream power is either Legiſlative, or Gubernative, and that the Legiſlative power is the chief of the two*; he makes

P.1.

P.12.

both

both ſupream, and yet one chief: the like diſtinction he hath before, where he ſaith, *The power of Magiſtracy, in reſpect of its degrees, is Nomothetical or Architectonical*; and *Gubernative or Executive*: by theſe words of *Legiſlative*, *Nomothetical*, and *Architectonical* power, in plain Engliſh, he underſtands *a power of making Laws*; and by *Gubernative* and *Executive*, a *power of putting thoſe Laws in execution, by judging and puniſhing offenders.* P.5.

The reſult we have from hence is, that by the Authors acknowledgment, every Monarch muſt have the ſupream power, and that ſupream power is, a power to make laws: and howſoever the Author makes the Gubernative and Executive power a part of the ſupream power; yet he confeſſeth *the Legiſlative to be chief, or the higheſt degree of power*, for he doth acknowledge degrees of ſupream power; nay, he afterwards teacheth us, that *the Legiſlative power is the height of power, to which the other parts are ſubſequent and ſubſervient*: if Gubernative be ſubſervient to Legiſlative, how can Gubernative power be ſupream? P.40.

Now let us examime the Authors *Limited Monarch* by theſe his own rules; he tells us, that in a *moderated, limited, ſtinted, conditionate, legal or allayed Monarchy*, (for all theſe terms he hath for it) *the ſupream power muſt be reſtrained by ſome Law according to which this power was given*, and *by direction of which this power muſt act*; when in a line before he ſaid, that *the Monarchs power muſt not be limited by any power above his*: yet here he will have his ſupream power reſtrained; not limited, and yet reſtrained: is not a reſtraint, P.12.

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a limitation? and if reſtrained, how is it ſupream? and if reſtrained by ſome Law, is not the power of that Law, and of them that made that Law, above his ſupream power? and if by the direction of ſuch Law onely he muſt govern, where is the Legiſlative power, which is the chief of ſupream power? When the Law muſt rule and govern the Monarch, and not the Monarch the Law, he hath at the moſt but a Gubernative or
P.14. Executive power: *If his authority tranſcends its bounds, if it command beyond the law, and the Subject is not bound legally to ſubjection in ſuch caſes*, and *if the utmoſt extent of the law of the land be the meaſure of the Limited Monarchs*
P.16. *power, and Subjects duty*, where ſhall we find the ſupream power, that *Culmen* or *apex poteſtatis*, that *prime* ἀρχὴ, which our Author ſaith, *muſt be in every Monarch*: The word ἀρχὴ, which ſignifies *principality and power*, doth alſo ſignifie *principium, beginning*; which doth teach us, that by the word *Prince*, or *principality*, the *principium* or beginning of Government is meant; this, if it be given to the Law, it robs the Monarch, and makes the Law the *primum mobile*; and ſo that which is but the inſtrument, or ſervant to the Monarch, becomes the maſter. Thus much of the word ἀρχεῖν.

The other word is Μόνος, *ſolus, one alone*: the Monarch muſt not only have the ſupream power unlimited, but he muſt have it alone (without
P.15. any companions.) Our Author teacheth us, *He is no Monarch if the Supream power*
P.17. *be not in one*. And again he ſaith, *if you put the* apex poteſtatis, *or ſupream power, in the*

*the whole body, or a part of it, you deſtroy the being of Monarchy.*

Now let us ſee if his mixed Monarchy be framed according to theſe his own principles: Firſt, he ſaith, *in a mixed Monarchy the ſoveraign power muſt be originally in all three Eſtates.* And again, his words are, *The three Eſtates are all ſharers in the ſupream power —— the primity of ſhare in the ſupream power is in One.* Here we find, that he that told us the ſupream power muſt be in one, will now allow his mixed Monarch but one ſhare only of the ſupream power, and gives other ſhares to the Eſtates: thus he deſtroys the being of Monarchy, by putting the *ſupream power*, or culmen poteſtatis, *or a part of it, in the whole body, or a part thereof*; and yet formerly he confeſſeth, that *the power of Magiſtracy cannot well be divided, for it is one ſimple thing, or indiviſable beam of divine perfection:* but he can make this indiviſable beam to be diviſable into three ſhares. I have done with the word Μόνος, *ſolus, alone.* P.5.

I have dwelt the longer upon this definition of Monarchy, becauſe the apprehending of it out of the Authors own grounds, quite overthrows both his *Monarch Limited by Law*, and *his Monarch Mixed with the States.* For to Govern, is to give a Law to others, and not to have a Law given to Govern and limit him that Governs: And to govern alone, is not to have ſharers or companions mixed with the Governor. Thus the two words of which Monarchy is compounded, contradict the two ſorts of Monarchy which he pleads for; and by conſequence his whole Treatiſe: for theſe two ſorts of *limited* and *mixed*

*ed* Monarchy take up (in a manner) his whole Book.

I will now touch ſome few particular paſſages in the Treatiſe.

P.2. Our Author firſt confeſſeth, *it is Gods expreſs ordinance there ſhould be Government*; and he proves it by *Gen.* 3. 16. where God ordained *Adam to rule over his Wife, and her deſires were to be ſubject to his*; and as hers, ſo all theirs that ſhould come of her. Here we have the original grant of Government, and the fountain of all power placed in the *Father* of all mankind; accordingly we finde the *law* for obedience to government given in the terms of *honour thy Father*: not only the conſtitution of power in general, but the limitation of it to one kind (that is, to Monarchy, or the government of one alone) and the determination of it to the individual perſon and line of *Adam*, are all three ordinances of God. Neither *Eve* nor her Children could either limit *Adams* power, or joyn others with him in the government; and what was given unto *Adam*, was given in his perſon to his poſterity. This paternal power continued monarchical to the Floud, and after the Floud to the confuſion of *Babel:* when Kingdoms were firſt erected, planted, or ſcattered over the face of the world, we finde *Gen.* 10. 11. it was done by Colonies of whole families, over which the prime Fathers had ſupream power, and were Kings, who were all the ſons or grand-children of *Noah*, from whom they derived a fatherly and regal power over their families. Now if this ſupream power was ſetled and founded by God himſelf in the fatherhood, how is it poſſible for the people

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to have any right or title to alter and diſpoſe of it otherwiſe? what commiſſion can they ſhew that gives them power either of *limitation or mixture?* It was Gods ordinance, that Supremacy ſhould be unlimited in *Adam*, and as large as all the acts of his will: and as in him, ſo in all others that have ſupream power, as appears by the judgement and ſpeech of the people to *Joſhuah* when he was ſupream Governour, theſe are their words to him, *All that thou commandeſt us we will do; whoſoever he be that doth rebel againſt thy commandment, and will not hearken unto thy words in all that thou commandeſt him, he ſhall be put to death*: we may not ſay that theſe were evil Councellours or flattering Courtiers of *Joſhuah*, or that he himſelf was a Tyrant for having ſuch arbitrary power. Our Author, and all thoſe who affirm that *power is conveyed to perſons by publick conſent*, are forced to confeſs, that it is the fatherly power that firſt inables a people to make ſuch conveyance; ſo that admitting (as they hold) that our Anceſtors did at firſt convey power, yet the reaſon why we now living do ſubmit to ſuch power, is, for that our Fore-fathers every one for himſelf, his family, and poſterity, had a power of reſigning up themſelves and us to a ſupream power. As the Scripture teacheth us that *ſupream power was originally in the fatherhood without any limitation*, ſo likewiſe Reaſon doth evince it, that if God ordained that Supremacy ſhould be, that then Supremacy muſt of neceſſity be unlimited: for the power that limits muſt be above that power which is limited; if it be limited, it cannot be ſupream: ſo that if our Author will grant ſupream power to be the ordi-

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nance of God, the ſupream power will prove it ſelf to be unlimited by the ſame ordinance, becauſe a ſupream limited power is a contradiction.

The Monarchical power of *Adam* the Father of all fleſh, being by a general binding ordinance ſetled by God in him and his poſterity by right of fatherhood, the form of Monarchy muſt be preferr'd above other forms, except the like ordinance for other forms can be ſhewed: neither *may men according to their relations to the form they live under, to their affections and judgments in divers reſpects, prefer or compare any other form with Monarchy.* The point that moſt perplexeth our Author and many others, is, that if Monarchy be allowed to be the ordinance of God, *an abſurdity would follow, that we ſhould uncharitably condemn all the Communities which have not that form, for violation of Gods ordinance, and pronounce thoſe other powers unlawful.* If thoſe who live under a Monarchy can juſtifie the form they live under to be Gods ordinance, they are not bound to forbear their own juſtification, becauſe others cannot do the like for the form they live under; let others look to the defence of their own Government: if it cannot be provd or ſhewd that any other form of government had ever any lawful beginning, but was brought in or erected by Rebellion, muſt therefore the lawful and juſt obedience to Monarchy be denied to be the ordinance of God?

To proceed with our Author; in the 3 *page* he ſaith, *the Higher Power is Gods ordinance: That it reſideth in One or more, in ſuch or ſuch a way, is from humane deſignment; God by no word binds any people to this or that form, till they by their own act bind themſelves.* Becauſe the power and conſent

ſent of the people in government is the burden of the whole Book, and our author expects it ſhould be admitted as a magiſterial poſtulation, without any other proof than a naked ſuppoſition; and ſince others alſo maintain that *originally Power was, or now is in the People*, & that *the firſt Kings were choſen by the People*: they may not be offended, if they be asked in what ſence they underſtand the word [*People*] becauſe this, as many other words, hath different acceptions, being ſometimes taken in a larger, otherwhiles in a ſtricter ſence. Literally, and in the largeſt ſence, the word *People* ſignifies the *whole multitude of mankind*; but *figuratively* and *ſynecdochically*, it notes many times the *major part* of a multitude, or ſometimes the *better*, or the *richer*, or the *wiſer*, or ſome other part; and oftentimes a very ſmall part of the people, if there be no other apparent oppoſite party, hath the name of the people *by preſumption*.

If they underſtand that the entire multitude or whole people have originally by nature power to chuſe a King, they muſt remember, that by their own principles and rules, by nature all mankind in the world makes but one People, who they ſuppoſe to be born alike to an equal freedome from ſubjection; and where ſuch freedome is, there all things muſt of neceſſity be common: and therefore without a joynt conſent of the whole people of the world, no one thing can be made proper to any one man, but it will be an injury, and an uſurpation upon the common right of all others. From whence it follows, that natural *freedome* be-being once granted, there cannot be any one man choſen a King without the univerſal conſent of all

the people of the world at one inſtant, *nemine contradicente.* Nay, if it be true that *nature* hath made all men free; though all mankind ſhould concur in one vote, yet it cannot ſeem reaſonable, that they ſhould have power to alter the law of nature; for if no man have power to take away his own life without the guilt of being a murtherer of himſelf, how can any people confer ſuch a power as they have not themſelves upon any one man, without being acceſſories to their own deaths, and every particular man become guilty of being *felo de ſe?*

If this general ſignification of the word *people* be diſavowed, and men will ſuppoſe that the *people* of particular Regions or Countries have power and freedome to chuſe unto themſelves Kings; then let them but obſerve the conſequence: Since nature hath not diſtinguiſhed the habitable world into Kingdomes, nor determined what part of a *people* ſhall belong to one Kingdome, and what to another, it follows, that the original freedome of mankind being ſuppoſed, every man is at liberty to be of what Kingdome he pleaſe, and ſo every petty company hath a right to make a Kingdom by it ſelf; and not onely every City, but every Village, and every Family, nay and every particular man, a liberty to chuſe himſelf to be his own King if he pleaſe; and he were a madman that being by nature free, would chuſe any man but himſelf to be his own Governour. Thus to avoid the having but of one King of the whole world, we ſhall run into a liberty of having as many Kings as there be men in the world, which upon the matter, is to have no King at all, but to leave

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all men to their natural liberty, which is the miſchief the Pleaders for *natural liberty* do pretend they would moſt avoid.

But if neither the whole people of the world, nor the whole people of any part of the world be meant, but only the *major part*, or ſome other part of a part of the world; yet ſtill the objection will be the ſtronger. For beſides that nature hath made no partition of the world, or of the people into diſtict Kingdomes, and that without an univerſal conſent at one and the ſame inſtant no partition can be made: yet if it were lawful for particular parts of the world by conſent to chuſe their Kings, nevertheleſs their elections would bind none to ſubjection but only ſuch as conſented; for the *major part* never binds, but where men at firſt either agree to be ſo bound, or where a higher power ſo commands: Now there being no higher power than nature, but God himſelf; where neither nature nor God appoints the *major part* to bind, their conſent is not binding to any but only to themſelves who conſent.

Yet, for the preſent to gratifie them ſo far as to admit that either by nature, or by a general conſent of all mankind, the world at firſt was divided into particular Kingdomes, and the *major part* of the people of each Kingdome aſſembled, allowed to chuſe their King: yet it cannot truly be ſaid that ever the *whole people*, or the *major part*, or indeed any conſiderable part of the whole people of any nation ever aſſembled to any ſuch purpoſe. For except by ſome ſecret miraculous inſtinct they ſhould all meet at one time, and place, what one man, or company of men leſs than the whole

people hath power to appoint either time or place of elections, where all be alike *free by nature?* and without a lawful ſummons, it is moſt unjuſt to bind thoſe that be abſent. The whole people cannot ſummon it ſelf; one man is ſick, another is lame, a third is aged, and a fourth is under age of diſcretion: all theſe at ſome time or other, or at ſome place or other, might be able to meet, if they might chuſe their own time and place, as men naturally free ſhould.

In Aſſemblies that are by humane politique conſtitution, the ſuperior power that ordains ſuch aſſemblies, can regulate and confine them, both for time, place, perſons, and other circumſtances: but where there is an equality by nature, there can be no ſuperior power; there every Infant at the hour it is born in, hath a like intereſt with the greateſt and wiſeſt man in the world. Mankind is like the ſea, ever ebbing or flowing, every minute one is born, another dies; thoſe that are the people this minute, are not the people the next minute, in every inſtant and point of time there is a variation: no one time can be indifferent for all mankind to aſſemble; it cannot but be miſchievous always at the leaſt to all Infants, and others under age of diſcretion; not to ſpeak of women, eſpecially Virgins, who by birth have as much *natural freedome* as any other, and therefore ought not to loſe their liberty without their own conſent.

But in part to ſalve this, it will be ſaid that Infants and Children may be concluded by the votes of their Parents. This remedy may cure ſome part of the miſchief, but it deſtroys the whole cauſe, and at laſt ſtumbles upon the true original

original of government. For if it be allowed, that the acts of Parents bind the Children, then farewel the doctrine of the *natural freedome of mankind*; where ſubjection of Children to Parents is natural, there can be no natural freedome. If any reply, that not all Children ſhall be bound by their Parents conſent, but onely thoſe that are under age: It muſt be conſidered, that in nature there is no *nonage*; if a man be not born free, ſhe doth not aſſign him any other time when he ſhall attain his freedome: or if ſhe did, then Children attaining that age, ſhould be diſcharged of their Parents contract. So that in concluſion, if it be imagined that the people were ever but once free from ſubjection by nature, it will prove a meer impoſſibility ever lawfully to introduce any kind of government whatſoever, without apparent wrong to a multitude of people.

It is further obſervable, that ordinarily Children and Servants are far a greater number than Parents and Maſters; and for the major part of theſe to be able to vote and appoint what Government or Governours their Fathers and Maſters ſhall be ſubject unto, is moſt unnatural, and in effect to give the Children the government over their Parents.

To all this it may be oppoſed, What need diſpute how a people can chuſe a King, ſince there be multitude of examples that Kings have been, and are now adays choſen by their people? The anſwer is, 1. The queſtion is not of the *fact*, but of the *right*, whether it have been done by a *natural*, or by an *uſurped* right. 2. Many Kings are, and have bin choſen by ſome ſmall part of a

people; but by the *the whole*, or *major part* of a Kingdom not any at all. Moſt have been elected by the Nobility, Great men, and Princes of the blood, as in *Poland*, *Denmarke*, and in *Sweden*; not by any *collective* or *repreſentative* body of any Nation: ſometimes a factious or ſeditious City, or a mutinous Army hath ſet up a King, but none of all thoſe could ever prove they had *right* or juſt title either by *nature*, or any otherwiſe, for ſuch elections. We may reſolve upon theſe two propoſitions: 1. *That the people have no power or right of themſelves to chuſe Kings.* 2. *If they had any ſuch right, it is not poſſible for them any way lawfully to exerciſe it.*

You will ſay, *There muſt neceſſarily be a right in ſomebody to elect, in caſe a King die without an Heir.* I anſwer, *No King can die without an Heir, as long as there is any one man living in the world.* It may be the Heir may be unknown to the people; but that is no fault in nature, but the negligence or ignorance of thoſe whom it concerns. But if a King could die without an Heir, yet the Kingly power in that caſe ſhall not eſcheat to the whole people, but to the ſupream Heads and Fathers of Families; not as they are the *people*, but *quatenus* they are Fathers of people, over whom they have a ſupream power devolved unto them after the death of their ſoveraign Anceſtor: and if any can have a right to chuſe a King, it muſt theſe Fathers, by conferring their diſtinct fatherly powers upon one man alone. Chief fathers in Scripture are accounted as all the people, as *all the Children of Iſrael*, as *all the Congregation*, as the Text plainly expounds it ſelf, 2 *Chr.* 1. 2. where *Solomon* ſpeaks to *All Iſrael*,

*Iſrael*, that is, *to the Captains, the Judges, and to every Governour, the* CHIEF OF THE FATHERS: and ſo the *Elders of Iſrael* are expounded to be *the chief of the Fathers of the Children of Iſrael*, 1 *King.* 8. 1. and the 2 *Chr.* 5. 2.

If it be objected, That Kings are not now (as they were at the firſt planting or peopling of the world) the Fathers of their People or Kingdoms, and that the fatherhood hath loſt the right of governing; An anſwer is, That all Kings that now are, or ever were, are, or were either Fathers of their people, or the Heirs of ſuch Fathers, or Uſurpers of the right of ſuch Fathers. It is a truth undeniable, that there cannot be any multitude of men whatſoever, either great, or ſmall, though gathered together from the ſeveral corners and remoteſt regions of the world, but that in the ſame multitude, conſidered by it ſelf, there is one man amongſt them that in nature hath a right to be the King of all the reſt, as being the next Heir to *Adam*, and all the others ſubject unto him: every man by nature is a King, or a Subject: the obedience which all Subjects yeild to Kings, is but the paying of that duty which is due to the ſupream fatherhood: Many times by the act either of an Uſurper himſelf, or of thoſe that ſet him up, the true Heir of a Crown is diſpoſſeſſed, God uſing the miniſtry of the wickedeſt men for the removing and ſetting up of Kings: in ſuch caſes the Subjects obedience to the fatherly power muſt go along and wait upon Gods providence, who only hath right to give and take away Kingdomes, and thereby to adopt Subjects into the obedience of another fatherly power: according to

that of *Arist.* Πατρικὴ γὰρ ἀρχὴ βούλεται ἡ βασιλεία εἶναι. *A Monarchy or Kingdom will be a fatherly government. Ethic. l.* 8. *c.* 12.

However the *natural freedome of the people* be cried up as the sole means to determine the kind Government and the Governours: yet in the close, all the favourers of this opinion are constrained to grant that the obedience which is due to the fatherly power is the true and only cause of the subjection which we that are now living give to Kings, since none of us gave consent to government, but only our Fore-fathers act and consent hath concluded us.

Whereas many confess that Government only in the *abstract* is the ordinance of God, they are not able to prove any such ordinance in the Scripture, but only in the fatherly power, and therefore we find the Commandment that enjoyns obedience to superiours, given in the terms of *Honour thy Father*: so that not onely the *power or right of government*, but the *form of the power of governing*, and *the person having that power*, are all the ordinance of God: the first Father had not only simply power, but power Monarchical, as he was a Father, immediately from God. For by the appointment of God, as soon as *Adam* was created he was Monarch of the World, though he had no subjects; for though there could not be actual government until there were Subjects, yet by the right of nature it was due to *Adam* to be Governour of his posterity: though not in *act*, yet at least in *habit*, *Adam* was a King from his Creation: And in the state of innocency he had been Governour of his Children; for the *integrity* or *excellency* of the

the ſubjects doth not take away the *order* or *eminency* of the Governour. *Eve* was ſubject to *Adam* before he ſinned; the Angels,who are of a pure nature,are ſubject to God:which confutes their ſaying, who in diſgrace of civil Government or power ſay it was brought in by ſin: Government as to *coactive power* was after ſin, becauſe coaction ſuppoſeth ſome diſorder, which was not in the ſtate of innocency: But as for *directive power*, the condition of humane nature requires it, ſince civil ſociety cannot be imagined without power of Government: for although as long as men continued in the ſtate of innocency they might not need the direction of *Adam* in thoſe things which were *neceſſarily* and *morally* to be done; yet things *indifferent*, that depended meerly on their free will,might be directed by the power of *Adams* command.

If we conſider the firſt plantations of the world which were after the building of *Babel* when the confuſion of tongues was, we may find the diviſion of the earth into diſtinct Kingdomes and Countries, by ſeveral families, whereof the Sons or Grand-children of *Noah* were the Kings or Governours by a fatherly right; and for the preſervation of this power and right in the Fathers, God was pleaſed upon ſeveral Families to beſtow a Language on each by it ſelf, the better to unite it into a Nation or Kingdom; as appears by the words of the Text, *Gen.* 10. *Theſe are the Families of the Sons of* Noah, *after their generations in their Nations, and by theſe were the Nations divided in the earth after the floud: Every one after* HIS TONGUE, AFTER THEIR FAMILIES *in their Nations.*

The

The Kings of *England* have been gratiouſly pleaſed to admit and accept the Commons in Parliament as the repreſentees of the Kingdom, yet really and truly they are not the repreſentative body of the whole Kingdom.

The commons in Parliament are not the repreſentative body of the whole Kingdom; they do not repreſent the King, who is the head and principal member of the Kingdom; nor do they repreſent the Lords, who are the nobler and higher part of the body of the Realm, and are perſonally preſent in Parliament, and therefore need no repreſentation. The Commons onely repreſent a part of the lower or inferior part of the body of the People, which are the Free-holders worth 40 s. by the year, and the Commons or Free-men of Cities and Burroughs, or the *major part* of them. All which are not one quarter, nay, not a tenth part of the Commons of the Kingdom; for in every Pariſh, for one Free-holder there may be found ten that are no Free-holders: and anciently before Rents were improved, there were nothing neer ſo many Free-holders of 40 s. by the year as now are to be found.

The ſcope and Concluſion of this diſcourſe and Argument is, That the people taken in what notion or ſenſe ſoever, either *diffuſively*, *collectively*, or *repreſentatively*, have not, nor cannot exerciſe any right or power of their own by nature, either in chuſing or in regulating Kings. But whatſoever power any people doth lawfully exerciſe, it muſt receive it from a ſupream power on earth, and practice it with ſuch limitations as that ſuperior power ſhall appoint. To return to our Author.

He

He divides Monarchy into { *Abſolute*, *Limited.*

*Abſolute Monarchy* (ſaith he) *is, when the Soveraignty is ſo fully in one, that it hath no limits or bounds under God but his own will.* This definition of his I embrace. And as before I charged our Author for not giving us a definition of Monarchy in general, ſo I now note him for not affording us any definition of any other particular kind of Monarchy but onely of abſolute: it may peradventure make ſome doubt that there is no other ſort but only that which he calls *abſolute.* P.6.

Concerning *abſolute Monarchy*, he grants, that *ſuch were the antient Eaſtern Monarchies, and that of the Turk and Perſian at this day.* Herein he ſaith very true. And we muſt remember him, though he do not mention them, that the Monarchs of *Judah* and *Iſrael* muſt be comprehended under the number of thoſe he calls the *Eaſtern Monarchies:* and truly if he had ſaid that all the antient Monarchies of the world had been abſolute, I ſhould not have quarreld at him, nor do I know who could have diſproved him.

Next it follows, that *Abſolute Monarchy is, when a people are abſolutely reſigned up, or reſign up themſelves to be governed by the will of One man. Where men put themſelves into this utmoſt degree of ſubjection by oath and contract, or are born and brought unto it by Gods providence.* In both theſe places he acknowledgeth there may be other means of obtaining a Monarchy, beſides the contract of a Nation or peoples reſigning up themſelves to be governed, which is contrary to what he after ſaies, that *the ſole mean or root of all Soveraignty, is the conſent and fundamental contract of a Nation of men.* P.12.

More-

Moreover, the Author determines, that *Abſolute Monarchy is a lawful government, and that men may be born and brought unto it by Gods providence; it binds them, and they muſt abide it, becauſe an oath to a lawful thing is obligatory.* This Poſition of his I approve, but his Reaſon doth not ſatisfie; for men are bound to obey a lawful Governour, though neither they nor their Anceſtors ever took oath.

Then he proceeds,& confeſſeth that in *Rom.* 13. *the power which then was, was Abſolute:* P.7. *yet the Apoſtle not excluding it, calls it* Gods ordinance, *and commands ſubjection to it. So Chriſt commands Tribute to be paid, and pays it himſelf; yet it was an arbitrary tax, the production of an abſolute power.* Theſe are the loyal expreſſions of our Author touching *abſolute* or *arbitrary* Monarchy. I do the rather mention theſe paſſages of our Author, becauſe very many in theſe days do not ſtick to maintain, that an arbitrary or Abſolute Monarch not limited by law, is all one with a Tyrant; and to be governed by one mans will, is to be made a ſlave. It is a queſtion whether our Author be not of that minde, when he ſaith, *abſolute ſubjection is ſervitude*: and thereupon a late friend to limited Monarchy affirms in a P.54. diſcourſe upon the queſtion in debate between the King and Parliament, That *to make a King by the ſtandard of Gods word, is to make the Subjects ſlaves for conſcience ſake.* A hard ſaying, and I doubt whether he that gives this cenſure can be excuſed from blaſphemy. It is a bold ſpeech, to condemn all the Kings of *Judah for Tyrants*, or to ſay all their *Subjects were ſlaves.* But cer-

certainly the man doth not know neither what a Tyrant is, or what a Slave is: indeed the words are frequent enough in every mans mouth, and our old Engliſh Tranſlation of the Bible uſeth ſometimes the word *Tyrant*; but the Authors of our new Tranſlation have been ſo careful, as not once to uſe the word, but onely for the proper name of a man, *Act.* 19. 9. becauſe they find no Hebrew word in the Scripture to ſignifie a *Tyrant* or a *Slave*. Neither *Ariſtotle*, *Bodin*, nor Sir *Walter Rawleigh*, (who were all men of deep judgement) can agree in a definition or deſcription of Tyranny, though they have all three laboured in the point. And I make ſome queſtion whether any man can poſſibly deſcribe what a Tyrant is, and then tell me any one man that ever was in the world that was a Tyrant according to that deſcription.

I return again to our Treatiſe of Monarchy, where I find *three* DEGREES *of abſolute Monarchy.*

1. *Where the Monarch, whoſe will is the law, doth ſet himſelf no law to rule by, but by commands of his own judgement as he thinks fit.*

2. *When he ſets a law by which he will ordinarily govern, reſerving to himſelf a liberty to vary from it as oft as in his diſcretion he thinks* FIT; and *in this the Soveraign is as free as the former.*

3. *Where he not onely ſets a rule, but promiſeth in many caſes not to alter it; but this promiſe or engagement is an after-condeſcent or act of grace, not diſſolving the abſolute Oath of ſubjection which went before it.*

For the firſt of theſe three, there is no queſtion but it is a pure abſolute Monarchy; but as for the

the other two, though he ſay *they be abſolute*, yet in regard they ſet themſelves limits or laws to govern by, if it pleaſe our Author to term them *limited Monarchs*, I will not oppoſe him; yet I muſt tell him, that his third degree of abſolute Monarchy is ſuch a kind, as I believe, never hath been, nor ever can be in the world. For a Monarch to promiſe and engage in many caſes not to *alter a law*, it is moſt neceſſary that thoſe many caſes ſhould be particularly expreſſed at the bargain making. Now he that underſtands the nature and condition of all *humane laws*, knows that particular caſes are infinite, and not comprehenſible within any rules or laws: and if many caſes ſhould be comprehended, and many omitted, yet even thoſe that were comprehended would admit of variety of interpretations and diſputations; therefore our Author doth not, nor can tell us of any ſuch reſerved caſes promiſed by any Monarch.

Again, where he ſaith, *An after-condeſcent or Act of grace doth not diſſolve the abſolute Oath of ſubjection which went before it*; though in this he ſpeak true, yet yet ſtill he ſeems to inſinuate, that *an Oath onely binds to ſubjection*, which Oath, as he would have us believe, was at firſt *arbitrary:* whereas Subjects are bound to obey Monarchs though they never *take oath* of *ſubjection*, as well as childen are bound to obey their parents, though they never ſwear to do it.

Next, his diſtincton between *the rule of*
P.7. *power, and the exerciſe of it*, is vain; for *to rule*,
P.1. is *to exerciſe* power: for himſelf ſaith, that *Government is* poteſtatis exercitium, *the exerciſe of a moral power*. Laſtly,

Laſtly, whereas our Author ſaith, *a Monarch cannot break his promiſe without ſin*; let me add, that if the ſafety of the people, *ſalus populi*, require a breach of the Monarchs promiſe, then the ſin, if there be any, is rather in the *making*, than *breaking of the promiſe*; the *ſafety of the people* is an exception implied in every Monarchical promiſe.

But it ſeems theſe three degrees of Monarchy do not ſatisfie our Author; he is not content to have a Monarch have a Law or rule to govern by, but he muſt have *this limitation or law to be* ab externo, *from ſomebody elſe, and not from the determination of the Monarchs own will*; and therefore he ſaith, *By original conſtitution the ſociety publick confers on one man a power by limited contract, reſigning themſelves to be governed by ſuch a Law*: alſo before he told us, *the ſole means of Soveraignty is the conſent and fundamental contract; which conſent puts them in their power, which can be no more nor other than is conveyed to them by ſuch contract of ſubjection.* If the ſole means of a limited Monarchy be the conſent and fundamental contract of a Nation, how is it that he ſaith, *A Monarch may be limited by after-condeſcent?* is an after-condeſcent *all one* with a fundamental contract, with original and radical conſtitution? why yea: he tells us *it is a ſecundary original conſtitution*, a ſecundary original, that is, *a ſecond firſt*: And if that condeſcent be an act of grace, doth not this condeſcent to a limitation come from the free determination of the Monarchs will? If he either *formally*, *or virtually* (as our Author ſuppoſeth) *deſert his abſolute*

P. 12.

P. 13.

*or*

*or arbitrary power which he hath by conqueſt, or other right.*

And if it be from the free will of the Monarch, why doth he ſay the limitation muſt be *ab externo?* he told us before, that *ſubjection cannot be diſſolved or leſſen'd by an Act of grace coming afterwards*: but he hath better bethought himſelf, and now he will have *acts of grace to be of two kinds, and the latter kind may amount* (as he ſaith) *to a reſignation of abſolute Monarchy.* But can any man believe that a Monarch who by conqueſt or other right hath an abſolute arbitrary power, will voluntarily reſigne that abſoluteneſs, and accept ſo much power onely as the people ſhall pleaſe to give him, and ſuch laws to govern by as they ſhall make choice of? can he ſhew that ever any Monarch was ſo gracious or kind-hearted as to lay down his lawful power freely at his Subjects feet? is it not ſufficient grace if ſuch an abſolute Monarch be content to ſet down a Law to himſelf by which he will ordinarily govern, but he muſt needs relinquiſh his old independent commiſſion, and take a new one from his Subjects, clog'd with limitations? P.8.

Finally, I obſerve, that howſoever our Author ſpeak big of the radical, fundamental, and original power of the people as the root of all Soveraignty: yet in a better moode he will take up, and be contented with a Monarchy limited by an after-condeſcent and act of grace from the Monarch himſelf.

Thus I have briefly touched his grounds of *Limited Monarchy*; if now we ſhall ask, what proof or examples he hath to juſtifie his doctrine, he

he is as mute as a fiſh: onely *Pythagoras* hath ſaid it, and we muſt believe him; for though our Author would have Monarchy to be limited, yet he could be content his opinion ſhould be abſolute, and not limited to any rule or example.

The main Charge I have againſt our Author now remains to be diſcuſſed; and it is this, That inſtead of a Treatiſe of *Monarchy*, he hath brought forth a Treatiſe of *Anarchy*, and that by his own confeſſions ſhall be made good.

Firſt, he holds, *A limited Monarch tranſcends his bounds if he commands beyond the law; and the Subject legally is not bound to ſubjection in ſuch caſes.*

Now if you ask the Author who ſhall be judge whether the Monarch tranſcend his bounds, and of the exceſſes of the ſoveraign power; His anſwer is, *There is an impoſſibility of conſtituting a judge to determine this laſt controverſie.* P.16. —— *I conceive in a limited legal Monarchy there can be no ſtated internal Judge of the Monarchs actions, if there grow a fundamental variance betwixt him and the community.* P.17. —— *There can be no Judge legal and conſtituted within that form of government.* In theſe anſwers it appears, there is no Judge to determine the Soveraigns or the Monarchs tranſgreſſing his fundamental limits: yet our Author is very cautelous, and ſuppoſeth onely a fundamental variance betwixt the Monarch and the Community; he is aſhamed to put the queſtion home. I demand of him if there be a variance betwixt the Monarch and any of the meaneſt perſons of the Community, who ſhall be the Judge? for inſtance, *The King commands me,*

*or gives judgement againſt me*: I reply, *His commands are illegal, and his judgment not according to Law:* who muſt judge? *if the Monarch himſelf judge, then you deſtroy the frame of the State, and make it abſolute*, ſaith our Author; and he gives his reaſon: for, *to define a Monarch to a Law, and then to make him judge of his own deviations from that Law, is to abſolve him from all Law.* On the other ſide, *if any, or all the people may judge, then you put the Soveraignty in the whole body, or part of it, and deſtroy the being of Monarchy.* Thus our Author hath caught himſelf in a plain *dilemma*: If the King be judge, then he is no limited Monarch; If the people be judge, then he is no Monarch at all. So farewell *limited Monarchy*, nay farewell *all government* if there be no Judge.

Would you know what help our Author hath found out for this miſchief? Firſt, he ſaith,
P,14. that *a Subjecti is bound to yield to a Magiſtrate, when he cannot*, de jure, *challenge obedience, if it be in a thing in which he can poſſibly without ſubverſion, and in which his act may not be made a leading caſe, and ſo bring on a preſcription againſt publick liberty*: Again he ſaith,
P.17. *If the act in which the exorbitance or tranſgreſſion of the Monarch is ſuppoſed to be, be of leſſer moment, and not ſtriking at the very being of that Government, it ought to be born by publick patience, rather than to endanger the being of the State.* The like words he uſes in another
P.49. place, ſaying, *If the will of the Monarch exceed the limits of the law, it ought to be ſubmitted to, ſo it be not contrary to Gods Law, nor bring with it ſuch an evil to our ſelves, or the publick*

*publick, that we cannot be acceſſary to it by obeying.* Theſe are but fig-leaves to cover the nakedneſs of our Authors limited Monarch, formed upon weak ſuppoſals in caſes of leſſer moment. For if the Monarch be to govern onely according to Law, no tranſgreſſion of his can be of ſo ſmall moment if he break the bounds of Law, but it is a ſubverſion of the government it ſelf, and may be made a leading caſe, and ſo bring on a preſcription againſt publick liberty; it ſtrikes at the very being of the Government, and brings with it ſuch an evil, as the party that ſuffers, or the publick cannot be acceſſory to: let the caſe be never ſo ſmall, yet if there be illegality in the act, it ſtrikes at the very being of *limited Monarchy*, which is to be legal: unleſs our Author will ſay, as in effect he doth, That his limited Monarch muſt govern according to Law in great and publick matters onely, and that in ſmaller matters which concern private men, or poor perſons, he may rule according to his own will.

Secondly, our Author tells us, *if the Monarchs act of exorbitancy or tranſgreſſion be mortal, and ſuch as ſuffered diſſolves the frame of Government and publick liberty, then the illegality is to be ſet open, and redreſment ſought by petition; which if failing, prevention by reſiſtance ought to be: and if it be apparent, and appeal be made to the conſciences of mankind, then the fundamental Laws of that Monarchy muſt judge and pronounce the ſentence in every mans conſcience, and every man (ſo far as concerns him) muſt follow the evidence of Truth in his own ſoul to oppoſe or not to oppoſe, according as he can in conſcience acquit or condemn the act of the governour or Monarch.* P. 17.

Whereas my Author requires, that the *deſtructive nature of illegal commands ſhould be ſet open*: Surely his mind is, That each private man in his particular caſe ſhould make a publick remonſtrance to the world of the illegal act of the Monarch; and then if upon his Petition he cannot be relieved according to his deſire, he ought, or it is his duty to make reſiſtance. Here I would know, who can be the judge whether the illegality be made apparent? it is a main point, ſince every man is prone to flatter himſelf in his own cauſe, and to think it good, and that the wrong or injuſtice he ſuffers is apparent, when other moderate and indifferent men can diſcover no ſuch thing: and in this caſe the judgement of the common people cannot be gathered or known by any poſſible means; or if it could, it were like to be various and erronious.

Yet our Author will have *an appeal made to the conſcience of all Man-kind*, and that being made, he concludes, *The fundamental Laws muſt judge, and pronounce ſentence in every mans conſcience.*

P.18. Whereas he ſaith, *The Fundamental Laws muſt judge*; I would very gladly learn of him, or of any other for him, what a Fundamental Law is, or elſe have but any one Law named me that any man can ſay is a Fundamental Law of the Monarchy. I confeſs he tells us, that

P.38. *the Common Laws are the foundation, and the Statute Laws are ſuperſtructive*; yet I think he dares not ſay that there is any one branch or part of the Common Law, but that it may be taken away by an act of Parliament: for many points of the Common Law *(de facto)* have, and

*(de*

(*de jure*) any point may be taken away. How can that be called Fundamental, which hath and may be removed, and yet the Statute-Laws ſtand firm and ſtable? It is contrary to the nature of Fundamental, for the building to ſtand when the foundation is taken away.

Beſides, the Common Law is generally acknowledged to be nothing elſe but common uſage or cuſtome, which by length of time onely obtains authority: So that it follows in time after Government, but cannot go before it, and be the rule to Government, by any original or radical conſtitution.

Alſo the Common Law being unwritten, doubtful, and difficult, cannot but be an uncertain rule to govern by; which is againſt the nature of a rule, which is and ought to be certain.

Laſtly, by making the common Law onely to be the foundation, *Magna Charta* is excluded from being a Fundamental Law, and alſo all other Statutes from being limitations to Monarchy, ſince the Fundamental Laws onely are to be judge.

Truly the conſcience of all Man-kind is a pretty large Tribunal for the Fundamental Laws to pronounce ſentence in. It is very much that Laws which in their own nature are dumb, and always need a Judge to pronounce ſentence, ſhould now be able to ſpeak, and pronounce ſentence themſelves: ſuch a ſentence ſurely muſt be upon the hearing of one party onely; for it is impoſſible for a Monarch to make his defence and anſwer, and produce his witneſſes, in every mans conſcience, in each mans cauſe, who will but queſtion the legality of the Monarchs Government. Cer-

tainly the ſentence cannot but be unjuſt, where but one mans tale is heard. For all this, the concluſion is, *Every man muſt oppoſe or not oppoſe the Monarch according to his own conſcience.* Thus at the laſt, every man is brought, by this Doctrine of our Authors, to be his own judge. And I alſo appeal to the conſciences of all man-kind, whether the end of this be not utter confuſion, and Anarchy.

Yet after all this, the Author ſaith, P.18. *This power of every mans judging the illegal acts of the Monarch, argues not a ſuperiority of thoſe who judge over him who is judged*; and he gives a profound reaſon for it; his words are, *It is not authoritative and civil, but moral, reſiding in reaſonable creatures, and lawful for them to execute.* What our Author means by theſe words, *(not authoritative and civil, but moral)* perhaps I underſtand not, though I think I do; yet it ſerves my turn that he ſaith, that *reſiſtance ought to be made, and every man muſt oppoſe or not oppoſe, according as in conſcience he can acquit or condemn the acts of his Governour*; for if it enable a man to reſiſt and oppoſe his Governour, without queſtion 'tis authoritative and civil. Whereas he adds, that *moral judgment is reſiding in reaſonable creatures, and lawful for them to execute*; he ſeems to imply, that authoritative, and civil judgement doth not reſide in reaſonable creatures, nor can be lawfully executed: Such a concluſion fits well with Anarchy; for he that takes away all Government, and leaves every man to his own conſcience, and ſo makes him an independent in State, may well teach that authority reſides not in reaſonable creatures, nor can be lawfully executed.

I

I paſs from his abſolute and limited Monarchy, to his diviſion or partition (for he allows no diviſion) of Monarchy into *ſimple* and *mixed*, *viz.* of a *Monarch*, the *Nobility*, and *Community*.

Where firſt, obſerve a doubt of our Authors, *whether a firm union can be in a mixture of equality; he rather thinks there muſt be a priority of order in one of the three, or elſe there can be no unity.* P. 25. He muſt know, that priority of order doth not hinder, but that there may be an equality of mixture, if the ſhares be equal; for he that hath the firſt ſhare may have no more than the others: ſo that if he will have an inequality of mixture, a primity of ſhare will not ſerve the turn: the firſt ſhare muſt be greater or better than the others, or elſe they will be equal, and then he cannot call it a mixed Monarchy, where onely a primity of ſhare in the Supream power is in one: but by his own confeſſion he may better call it a mixed Ariſtocracy or mixed Democracy, than a mixed Monarchy, ſince he tells us, *the Houſes of Parliament ſure have two parts of the greateſt legiſlative authority*; P. 56. and if the King have but a third part, ſure their ſhares are equal.

The firſt ſtep our Author makes, is this, *The ſoveraign power muſt be originally in all three*; next he finds, that *if there be an equality of ſhares in three Eſtates, there can be no ground to denominate a Monarch*; and then his mixed Monarch might be thought but an empty title: Therefore in the third place he reſolves us, that *to ſalve all, A power muſt be ſought out wherewith the Monarch muſt be inveſted, which is not ſo great as to deſtroy the mixture, nor ſo titular as to deſtroy the* P. 25.

*Monarchy*; and therefore he conceives it may be in theſe particulars.

First, *a Monarch in a mixed Monarchy*
P.26. *may be ſaid to be a Monarch* (as he conceives) *if he be the head and fountain of the power which governs and executes the eſtabliſhed Laws*; that is, a man may be a Monarch, though he do but give power to others to govern and execute the eſtabliſhed Laws: thus he brings his Monarch one ſtep or peg lower ſtill than he was before: at firſt he made us believe his Monarch ſhould have the ſupream power, which is the legiſlative; then he falls from that, and tells us, A limited Monarch muſt govern according to Law onely; thus he is brought from the legiſlative to the gubernative or executive power onely; nor doth he ſtay here, but is taken a hole lower, for now he muſt not govern, but *he muſt conſtitute Officers to govern by Laws*; if chuſing Officers to govern be governing, then our Author will allow his Monarch to be a Governour, not elſe: and therefore he that divided *Supream power* into *legiſlative* and *gubernative*, doth now divide it into *legiſlative*, and *power of conſtituting Officers* for governing by Laws; and *this* he ſaith *is left to the Monarch.* Indeed you have left him a fair portion of power, but are we ſure he may enjoy this? it ſeems our Author is not confident in this neither, and ſome others do deny it him: our Author ſpeaking of the
government of this Kingdome, ſaith, *The*
P.38. *choice of the Officers is intruſted to the judgment of the Monarch for ought I know*: he is not reſolute in the point; but for ought he knows, and for ought I know, his Monarch is

is but titular, an empty title, certain of no power at all.

The power of chuſing Officers onely, is the baſeſt of all powers. *Ariſtotle* (as I remember) ſaith, *The common people are fit for nothing but to chuſe Officers, and to take accompts:* and indeed, in all *popular governments* the multitude perform this work: and this work in a King puts him below all his Subjects, and makes him the onely ſubject in a Kingdome, or the onely man that cannot Govern: there is not the pooreſt man of the multitude but is capable of ſome Office or other, and by that means may ſometime or other perhaps govern according to the Laws; onely the King can be no Officer, but to chuſe Officers; his Subjects may all Govern, but he may not.

Next, I cannot ſee how in true ſence our Author can ſay, *his Monarch is the head and fountain of power*, ſince his doctrine is, that *in a limited Monarchy, the publick ſociety by original conſtitution confer on one man power*: is not then the publick ſociety the head and fountain of power, and not the King?

Again, when he tells us of his Monarch, that *both the other States, as well conjunctim as diviſim, be his ſworn ſubjects, and owe obedience to his commands:* he doth but flout his poor Monarch; for why are they called his Subjects and his Commons? he (without any complement) is their Subject; for they, as Officers, may govern and command according to Law: but he may not, for he muſt judge by his judges in Courts of Juſtice onely: that is, he may not judge or govern at all.

2. As

2. As for the ſecond particular, *The ſole or chief power in capacitating perſons for the Supream power.* And

3. As to this third particular, *The power of convocating ſuch perſons*, they are both ſo far from making a Monarch, that they are the onely way to make him none, by chooſing and calling others to ſhare in the Supream power.

4. Laſtly, concerning *his Authority being the laſt and greateſt in the eſtabliſhing every Act*, it makes him no Monarch, except he be ſole that hath that Authority; neither his *primity* of ſhare in the Supream power, nor *his Authority being laſt*, no, nor *his having the greateſt Authority*, doth make him a Monarch, unleſs he have that Authority alone.

Beſides, how can he ſhew that in his mixed Monarchy the Monarchs power is the greateſt? The greateſt ſhare that our Author allows him in the Legiſlative power, is a Negative voice, and the like is allowed to the Nobility and Commons: And truely, a Negative voice is but a baſe term to expreſs a Legiſlative power; a Negative voice is but a privative power, or indeed, no power at all to do any thing, onely a power to hinder an Act from being done.

Wherefore I conclude, not any of his four, nor all of them put into one perſon, makes the State Monarchical.

P.26.

This mixed Monarchy, juſt like the limited, ends in confuſion and deſtruction of all Government: you ſhall hear the Authors confeſſion, *That one inconvenience muſt neceſſarily be in all mixed Governments, which I ſhewed to be in limited Governments; there can be no conſtituted legal Authoritative Judge of the Fundamental Controverſies ariſing between the three Eſtates: If ſuch do riſe, it is*

P.28.

*the*

*the fatal diſeaſe of thoſe Governments, for which no ſalve can be applyed It is a caſe beyond the poſſible proviſion of ſuch a Government; of this queſtion there is no legal judge. The accuſing ſide muſt make it evident to every mans Conſcience.—The appeal muſt be to the community, as if there were no Government; and as by evidence Conſciences are convinced, they are bound to give their aſſiſtance.* The wit of man cannot ſay more for *Anarchy*.

Thus have I picked out the flowers out of his Doctrine about limited Monarchy, and preſented them with ſome brief Annotations; it were a tedious work to collect all the learned contradictions, and ambiguous expreſſions that occur in every page of his Platonick Monarchy; the Book hath ſo much of fancy, that it is a better piece of Poetry then Policy.

Becauſe many may think, that the main Doctrine of *limited* and *mixed* Monarchy may in it ſelf be moſt authentical, and grounded upon ſtrong and evident reaſon, although our Author perhaps have failed in ſome of his expreſſions, and be liable to exceptions: Therefore I will be bold to enquire, whether *Ariſtotle* could find either reaſon or example, of a *limited* or *mixed* Monarchy; and the rather, becauſe I find our Author altogether inſiſts upon a rational way of juſtifying his opinion. No man I think will deny, but that *Ariſtotle* was ſufficiently curious in ſearching out the ſeveral forms of Common-wealths and Kingdoms; yet I do not find, that he ever ſo much as dreamed of either a *limited* or *mixed* Monarchy. Several other ſorts of Monarchies he reckons up: in the Third Book of his Politicks, he ſpends three whole Chapters

ters together, upon the ſeveral kinds of Monarchy.

Firſt, in his fourteenth Chapter he mentions four kinds of Monarchy.

The *Laconique* or *Lacedemonian.*
The *Barbarique.*
The *Æſymnetical.*
The *Heroique.*

*The* Laconique *or* Lacedemonian *King*, (ſaith he) *had onely Supream power when he was out of the bounds of the* Lacedemonian *Territories; then he had abſolute power, his Kingdom was like to a perpetual Lord General of an Army.*

*The* Barbarique *King* (ſaith *Ariſtotle*) *had a power very near to Tyranny; yet they were lawful and Paternal, becauſe the* Barbarians *are of a more ſervile nature than the* Grecians, *and the* Aſiatiques *than the* Europeans; *they do willingly, without repining, live under a Maſterly Government; yet their Government is ſtable and ſafe, becauſe they are Paternal and lawful Kingdoms, and their Guards are Royal and not Tyrannical: for Kings are guarded by their own Subjects, and Tyrants are guarded by Strangers.*

*The* Æſymnetical *King* (ſaith *Ariſt.*) *in old time in* Greece, *was an Elective Tyrant, and differed onely from the* Barbarian *Kings, in that he was Elective and not Paternal; theſe ſorts of Kings, becauſe they were Tyrannical, were Maſterly; but becauſe they were over ſuch as voluntarily Elected them, they were Regal.*

*The Heroique were thoſe* (ſaith *Ariſtotle*) *which flouriſhed in the Heroical times, to whom the people did willingly obey; and they were Paternal and lawful, becauſe theſe Kings did deſerve well of the multitude, either*

*either by teaching them Arts, or by Warring for them, or by gathering them together when they were diſperſed, or by dividing Lands amongſt them: theſe Kings had Supreme power in War, in Sacrifices, in Judicature.*

Theſe four ſorts of Monarchy hath *Ariſtotle* thus diſtinguiſhed, and after ſums them up together, and concludes his Chapter as if he had forgot himſelf, and reckons up a fifth kind of Monarchy; which is, ſaith he, *When one alone hath Supream power of all the reſt: for as there is a domeſtical Kingdom of one houſe, ſo the Kingdom of a City, or of one or many Nations, is a Family.*

Theſe are all the ſorts of Monarchy that *Ariſtotle* hath found out, and he hath ſtrained hard to make them ſo many: firſt, for his *Lacedemonian* King, himſelf confeſſeth that he was but a kind of Military Commander in War, and ſo in effect no more a King than all Generals of Armies: And yet this No-king of his was not limited by any Law, nor mixed with any companions of his Government: when he was in the Wars out of the Confines of *Lacedemon*, he was, as *Ariſtotle* ſtiles him, Αὐτοκράτωρ, of full and abſolute command, no Law, no companion to govern his Army but his own will.

Next, for *Ariſtotles Æſymnetical* King, it appears, he was out of date in *Ariſtotles* time, for he ſaith, he was *amongſt the antient Greeks*, ἐν τοῖς ἀρχαίοις Ἕλλησιν. *Ariſtotle* might well have ſpared the naming him, (if he had not wanted other ſorts) for the honour of his own Nation: for he that but now told us the *Barbarians* were of a more ſervile nature than the *Grecians*, comes here, and tells us, that theſe old *Greek* Kings were Elective Tyrants. The *Barbarians* did but ſuffer Tyrants in ſhew, but the old

*Gre-*

*Grecians* choſe Tyrants indeed; which then muſt we think were the greater ſlaves, the *Greeks* or the *Barbarians?* Now if theſe ſorts of Kings were Tyrants, we cannot ſuppoſe they were limited either by Law, or joyned with companions: Indeed *Ariſt.* ſaith, ſome of theſe Tyrants were limited to certain times and actions, for they had not all their power for term of life, nor could meddle but in certain buſineſſes; yet during the time they were Tyrants, and in the actions whereto they were limited, they had abſolute power to do what they liſt according to their own will, or elſe they could not have been ſaid to be Tyrants.

As for *Ariſtotles Heroick* King, he gives the like note upon him, that he did upon the *Æſymnet*, that he was in old time ἐν τοῖς ἡρωϊκοῖς χρόνοις in the Heroick times. The thing that made theſe Heroical Kingdoms differ from other ſorts of Kingdoms, was only the means by which the firſt Kings obtained their Kingdoms, and not the manner of Government, for in that they were as abſolute as other Kings were, without either limitation by Law, or mixture of companions.

Laſtly, as for *Ariſt. Barbarick* ſort of Kings, ſince he reckoned all the world *Barbarians* except the *Grecians*, his *Barbarick* King muſt extend to all other ſorts of Kings in the world, beſides thoſe of *Greece*, and ſo may go under *Ariſtotles* fifth ſort of Kings, which in general comprehends all other ſorts, and is no ſpecial form of Monarchy.

Thus upon a true accompt it is evident, that the five ſeveral ſorts of Kings mentioned by *Ariſtotle*, are at the moſt but different and accidental means of the firſt obtaining or holding of Monarchies, and

and not **real or** eſſential differences of the manner of Government, which was always abſolute, without either **limitation or** mixture.

I may be thought perhaps to miſtake, or wrong *Ariſtotle*, in queſtioning his diverſities of Kings; but it ſeems *Ariſtotle* himſelf was partly of the ſame mind; for in the very next Chapter, when he had better conſidered of the point, he confeſſed, that *to ſpeak the truth, there were almoſt but two ſorts of Monarchies worth the conſidering, that is, his firſt or* Laconique *ſort, and his fifth or laſt ſort, where one alone hath Supream power over all the reſt*: thus he hath brought his five ſorts to two. Now for the firſt of theſe two, his *Lacedemonian* King, he hath confeſſed before, that *he was no more than a Generaliſſimo* of an Army, and ſo upon the matter no King at all: and then there remains onely his laſt ſort of Kings, *where one alone hath the Supream power.* And this in ſubſtance is the final reſolution of *Ariſtotle* himſelf: for in his ſixteenth Chapter, where he delivers his laſt thoughts touching the kinds of Monarchy, he firſt diſchargeth his *Laconick* King from being any ſort of Monarchy, and then gives us two exact rules about Monarchy; and both theſe are pointblank againſt limited and mixed Monarchy; therefore I ſhall propoſe them to be conſidered of, as concluding all Monarchy to be abſolute and Arbitrary.

1. The one Rule is, that *he that is ſaid to be a King according to Law, is no ſort of Government or Kingdom at all*: Ὁ κατὰ νόμον βασιλεὺς οὐκ ἔστιν εἶδος πολιτείας. *Ariſt. pol.* l. 3. c. 16.

2. The ſecond rule is, that *a true King is he that ruleth all according to his own will*, κατὰ τὴν αὑτοῦ βούλησιν.

This

This latter frees a Monarch from the mixture of partners or ſharers in Government, as the former rule doth from limitation by Laws.

Thus in brief I have traced *Ariſtotle* in his crabbed and broken paſſages, touching diverſities of Kings; where he firſt finds but four ſorts, and then he ſtumbles upon a fifth; and in the next Chapter contents himſelf onely with two ſorts of Kings, but in the Chapter following concludes with one, which is the true perfect Monarch, who rules all by his own will: in all this we find nothing for a regulated or mixed Monarchy, but againſt it.

Moreover, whereas the Author of the Treatiſe of Monarchy affirms it as a prime principle, *That all Monarchies*, (except that of the *Jews*) *depend upon humane deſignment, when the conſent of a ſociety of men, and a fundamental contract of a Nation, by original or radical conſtitution confers power*; He muſt know that *Ariſt.* ſearching into the original of Government, ſhews himſelf in this point a better Divine than our Author; and as if he had ſtudied the Book of *Geneſis*, teacheth, That Monarchies fetch their Pedigree from the right of Fathers, and not from the gift or contract of people; his words may thus be Engliſhed. *At the firſt, Cities were Governed by Kings, and ſo even to this day are Nations alſo: for ſuch as were under Kingly Government did come together; for every Houſe is governed by a King, who is the eldeſt; and ſo alſo Colonies are governed for kindred ſake.* And immediately before, he tells us, *That the firſt ſociety made of many Houſes is a Village, which naturally ſeems to be a Colony of a Houſe, which ſome call foſter-brethren, or Children, and Childrens Children.* So

So in concluſion we have gained *Ariſtotles* judgment in three main and eſſential points.

1. *A King according to Law makes no kind of Government.*

2. *A King muſt rule according to his own will.*

3. *The Original of Kings, is from the right of Fatherhood.*

What *Ariſtotles* judgment was two thouſand years ſince, is agreeable to the Doctrine of the great modern Politician *Bodin*: Hear him touching limited Monarchy: *Unto Majeſty or Soveraignty* (ſaith he) *belongeth an abſolute power, not ſubject to any Law — Chief power given unto a Prince with condition, is not properly Soveraignty, or power abſolute, except ſuch conditions annexed to the Soveraignty, be directly comprehended within the Laws of God and Nature. — Albeit by the ſufferance of the King of* England, *controverſies between the King and his people are ſometimes determined by the high Court of Parliament, and ſometimes by the Lord Chief Juſtice of* England; *yet all the Eſtates remain in full ſubjection to the King, who is no ways bound to follow their advice, neither to conſent to their requeſts. — It is certain, that the Laws, Priviledges, and Grants of Princes, have no force but during their life, if they be not ratified by the expreſs conſent, or by ſufferance of the Prince following, eſpecially Priviledges. Much leſs ſhould a Prince be bound unto the Laws he maketh himſelf; for a man may well receive a Law from another man, but impoſſible it is in nature for to give a Law unto himſelf, no more than it is to command a mans ſelf in a matter depending of his own will.* The Law ſaith, *Nulla obligatio conſiſtere poteſt, quæ à voluntate promittentis ſtatum capit. The Soveraign Prince may derogate unto*

*the Laws that he hath promiſed and ſworn to keep, if the equity thereof be ceaſed; and that of himſelf, without the conſent of his Subjects.* — *The Majeſty of a true Soveraign Prince is to be known, when the Eſtates of all the people aſſembled, in all humility preſent their requeſts and ſupplications to their Prince, without having power in any thing, to command, determine, or give voice, but that that which it pleaſeth the King to like or diſlike, to command or bid, is holden for Law: wherein they which have written of the duty of Magiſtrates have deceived themſelves, in maintaining that the power of the people is greater than the Prince; a thing which cauſeth oft true Subjects to revolt from their obedience to their Prince, and miniſtreth matter of great troubles in Common-wealths; of which their opinion there is neither reaſon nor ground: for if the King be ſubject unto the Aſſemblies and Decrees of the people, he ſhould neither be King nor Soveraign, and the Common-wealth neither Realm nor Monarchy, but a meer Ariſtocracie.* — *So we ſee the principal point of Soveraign Majeſty, and abſolute power, to conſiſt principally in giving Laws unto the Subjects in general without their conſent.* Bodin de Rep. l. 1. c. 8.

*To confound the ſtate of Monarchy with the Popular or Ariſtocratical eſtate, is a thing impoſſible, and in effect incompatible, and ſuch as cannot be imagined: for Soveraignty being of it ſelf indiviſible, how can it at one and the ſame time be divided betwixt one Prince, the Nobility, and the people in common? The firſt mark of Soveraign Majeſty, is to be of power to give Laws, and to command over them unto the Subjects; and who ſhould thoſe Subjects be, that ſhould yield their obedience to the Law, if they ſhould have alſo power to make the Laws? who ſhould he be that could give the Law? being*

*being himſelf conſtrained to receive it of them, unto whom himſelf gave it? ſo that of neceſſity we muſt conclude, That as no one in particular hath the power to make the Law in ſuch a State, that then the State muſt needs be a State popular.—— Never any Commonwealth hath been made of an Ariſtocracy and popular Eſtate, much leſs of the three Eſtates of a Commonweal. —— Such States wherein the rights of Soveraignty are divided, are not rightly to be called Common-weals, but rather the corruption of Common-weals, as* Herodotus *has moſt briefly but truly written. —— Common-weals which change their ſtate, the Sovereign right and power of them being divided, find no reſt from Civil wars and broils, till they again recover ſome one of the three Forms, and the Soveraignty be wholly in one of the ſtates or other. Where the rights of the Soveraignty are divided betwixt the Prince and his Subjects, in that confuſion of ſtate there is ſtill endleſs ſtirs and quarrels for the ſuperiority, until that ſome one, ſome few, or all together, have got the Soveraignty.* Id. lib. 2. c. 1.

This Judgment of *Bodin*'s touching Limited and Mixed Monarchy, is not according to the mind of our Author, nor yet of the Obſervator, who uſeth the ſtrength of his Wit to overthrow Abſolute and Arbitrary Government in this Kingdom; and yet in the main body of his diſcourſe, lets fall ſuch Truths from his pen, as give a deadly wound to the Cauſe he pleads for, if they be indifferently weighed and conſidered. I will not pick a line or two here and there to wreſt againſt him, but will preſent a whole Page of his Book, or more together, that ſo we may have an entire proſpect upon the Obſervators mind: *Without ſociety* (ſaith the

Obſervator) *men could not live; without Laws men could not be ſociable; and without Authority ſomewhere to judge according to Law, Law was vain: It was ſoon therefore provided, that Laws according to the dictate of Reaſon, ſhould be ratified by common conſent; when it afterward appeared, that man was yet ſubject to unnatural deſtruction, by the Tyranny of entruſted Magiſtrates, a miſchief almoſt as fatal, as to be without all Magiſtracy. How to provide a wholſome remedy therefore, was not ſo eaſie to be invented: it was not difficult to invent Laws for the limiting of Supream Governours; but to invent how thoſe Laws ſhould be executed, or by whom interpreted, was almoſt impoſſible,* Nam quis Cuſtodiet ipſos Cuſtodes, *to place a Superiour above a Supream, was held unnatural; yet what a lifeleſs thing would Law be without any Judge to determine and force it? If it be agreed upon, that limits ſhould be prefixed to Princes and Judges to decree according to thoſe limits, yet another inconvenience will preſently affront us: for we cannot reſtrain Princes too far, but we ſhall diſable them from ſome good: long it was ere the world could extricate it ſelf out of all theſe extremities, or find out an orderly means whereby to avoid the danger of unbounded Prerogative on this hand, and to exceſſive liberty on the other; and ſcarce has long experience yet fully ſatisfyed the minds of all men in it. In the Infancy of the world, when man was not ſo artificial and obdurate in cruelty and oppreſſion as now, and Policy moſt rude, moſt Nations did chooſe rather to ſubject themſelves to the meer diſcretion of their Lords, than rely upon any limits; and ſo be ruled by Arbitrary Edicts, than written Statutes. But ſince Tyranny being more exquiſite, and Policy more perfect, eſpecially where Learning and Religion flouriſh, few*

*few Nations will endure the thraldome which uſually accompanies unbounded and unconditionate Royalty; Yet* long it was *ere the bounds and conditions of Supream Lords was ſo wiſely determined, or quietly conſerved as now they are: for at firſt, when as* Ephori, Tribuni, Curatores, &c. *were erected to poiſe againſt the ſcale of Soveraignty, much blood was ſhed about them, and States were put into new broils by them, and ſome places the remedy proved worſe than the diſeaſe. In all great diſtreſſes, the body of the people were ever conſtrained to riſe, and by force of the major party to put an end to all inteſtine ſtrifes, and make a redreſs of all publick grievances: But many times calamities grew to a ſtrange height, before ſo cumberſome a body could be raiſed; and when it was raiſed, the motions of it were ſo diſtracted and irregular, that after much ſpoil and effuſion of blood, ſometimes only one Tyranny was exchanged for another, till ſome was invented to regulate the motions of the peoples moliminous body. I think Arbitrary rule was moſt ſafe for the World: but* Now, *ſince moſt Countries have found an art and peaceable order for publick Aſſemblies, whereby the people may aſſume its own power to do it ſelf right, without diſturbance to it ſelf or injury to Princes; he is very unjuſt that will oppoſe this art or order. That Princes may not be* Now *beyond all limits and Laws, nor yet to be tyed upon thoſe limits by any private parties; the whole Community, in its underived Majeſty, ſhall convene to do juſtice; and that the Convention may not be without intelligence, certain times, and places, and forms, ſhall be appointed for its reglement; and that the vaſtneſs of its own bulk may not breed confuſion, by vertue of election and repreſentation, a few ſhall act for many, the wiſe ſhall conſent for the ſmple,*

*the vertue of all ſhall redound to ſome, and the prudence of ſome ſhall redound to all; and ſurely as this admirably-compoſed Court, which is now called a Parliament, is more regularly and orderly formed, than when it was called mickle Synod of* Wittena-gemot, *or when this real body of the people did throng together at it: ſo it is* not yet *perhaps without ſome defects, which by art and policy might receive farther amendment: ſome diviſions have ſprung up of late between both Houſes, and ſome between the King and both Houſes, by reaſon of incertainty of Juriſdiction; and ſome Lawyers doubt how far the Parliament is able to create new forms and preſidents, and has a Juriſdiction over it ſelf; all theſe doubts would be ſolemnly ſolved: but in the firſt place, the true priviledges of Parliament belonging not only to the being and efficacy of it, but to the honour and complement of it, would be clearly declared: for the very naming of priviledges of Parliament, as if they were chimera's to the ignorant ſort, and utterly unknown unto the Learned, hath been entertained with ſcorn ſince the beginning of this Parliament.*

In this large paſſage taken out of the Obſervator which concerns the Original of all Government, two notable Propoſitions may be principally obſerved.

Firſt, our Obſervator confeſſeth *arbitrary or abſolute government to be the firſt, and the ſafeſt government for the world.*

Secondly, he acknowledgeth that *the Juriſdiction is uncertain, and the priviledges not clearly declared of limited Monarchy.*

Theſe two evident truths delivered by him, he labours mainly to diſguiſe. He ſeems to inſinuate that *Arbitrary Government was but in the infancy of the*

*the World*, for ſo he terms it; but if we enquire of him, how long he will have this infancy of the world to laſt, he grants it continued above three thouſand years, which is an unreaſonable time for the world to continue under-age: for the firſt oppoſers he doth finde of Arbitrary power, were the *Ephori*, *Tribuni*, *Curatores*, *&c.* The *Ephori* were above three thouſand years after the Creation, and the *Tribuni* were later; as for his *Curatores*, I know not whom he means, except the *Maſter of the Court of Wards*, I cannot Engliſh the word *Curator* better. I do not believe that he can ſhew that any *Curatores* or *&* *cætera*'s which he mentions were ſo antient as the *Ephori*. As for the *Tribuni*, he miſtakes much if he thinks they were erected to limit and bound Monarchy; for the State of *Rome* was at the leaſt *Ariſtocratical* (as they call it) *if not popular*, when *Tribunes* of the people were firſt hatched. And for the *Ephori*, their power did not limit or regulate Monarchy, but quite take it away; for a *Lacedemonian King in the judgment of* Ariſtotle *was no King indeed, but in name onely, as Generaliſſimo of an Army*; and the beſt Politicians reckon the *Spartan* Commonwealth to have been *Ariſtocratical*, and not *Monarchical*; and if a limited Monarchy cannot be found in *Lacedemon*, I doubt our *Obſervator* will hardly find it any where elſe in the whole World; and in ſubſtance he confeſſeth as much, when he ſaith, Now *moſt Countries have found out an art and peaceable order for publick Aſſemblies*; as if it were a thing but new done, and not before; for ſo the word *Now* doth import.

The *Obſervator* in confeſſing *the Juriſdiction to be incertain, and the priviledges undetermined of that*

*Court that ſhould bound and limit Monarchy*, doth in effect acknowledge there is no ſuch Court at all: for every Court conſiſts of *Juriſdictions* and *Priviledges*; it is theſe two that create a Court, and are the eſſentials of it: *If the admirably compoſed Court of Parliament have ſome defects which may receive amendment*, as he ſaith, *and if thoſe defects be ſuch as cauſe diviſions both between the Houſes, and between the King and both Houſes, and theſe diviſions be about* ſo main a matter as *Juriſdictions and Priviledges, and power to create new Priviledges*, all which are the Fundamentals of every Court, (for until they be agreed upon, the act of every Court may not onely be uncertain, but invalid, and cauſe of tumults and ſedition:) And *if all theſe doubts and diviſions have need to be ſolemnly ſolved*, as our *Obſervator* confeſſeth: Then he hath no reaſon at all to ſay, that *Now the conditions of Supream Lords are wiſely determined and quietly conſerved*, or that Now *moſt Countries have found out an art, and peaceable order for publick affairs, whereby the people may reſume its own power to do it ſelf right without injury unto Princes*: for how can the *underived Majeſty of the people by aſſuming its own power*, tell how to do *her ſelf right*, or how *to avoid doing injury to the Prince, if her Juriſdiction be uncertain, and Priviledges undetermined?*

He tells us Now *moſt Countries have found an art, and peaceable order for publick Aſſemblies: and to the intent that Princes may not be* Now *beyond all limits and Laws, the whole community in its underived Majeſty ſhall convene to do Juſtice.* But he doth not name ſo much as one Country or Kingdome that hath found out this art, where the whole

whole Community in its underived Majeſty did ever convene to do Juſtice. I challenge him, or any other for him, to name but one Kingdome that hath either *Now* or heretofore found out this art or peaceable order. We do hear a great rumor in this age, of moderated and limited Kings; *Poland*, *Sweden*, and *Denmark*, are talked of for ſuch; and in theſe Kingdomes, or nowhere, is ſuch a moderated Government, as our *Obſervator* means, to be found. A little enquiry would be made into the manner of the Government of theſe Kingdoms: for theſe Northern people, as *Bodin* obſerveth, *breath after liberty.*

Firſt for *Poland*, *Boterus* ſaith, that *the Government of it is elective altogether, and repreſenteth rather an Ariſtocracie than a Kingdome: the Nobility, who have great authority in the Diets, chuſing the King, and limiting His Authority, making His Soveraignty but a ſlaviſh Royalty: theſe diminutions of Regality began firſt by default of King* Lewis, *and* Jagello, *who to gain the ſucceſſion in the Kingdom contrary to the Laws, one for his daughter, and the other for his ſon, departed with many of his Royalties and Prerogatives, to buy the voices of the Nobility.* The *French* Author of the book called *the Eſtates of the world*, doth inform us that the *Princes Authority was more free, not being ſubject to any Laws, and having abſolute Power, not onely of their eſtates, but alſo of life and death. Since Chriſtian Religion was received, it began to be moderated, firſt by holy admonitions of the Biſhops and Clergy, and then by ſervices of the Nobility in war: Religious Princes gave many Honours, and many liberties to the Clergy and Nobility, and quit much of their Rights, the*

*which*

*which their ſucceſſors have continued. The ſuperiour dignity is reduced to two degrees, that is, the* Palatinate *and the* Chaſtelleine, *for that Kings in former times did by little and little call theſe men to publike conſultations, notwithſtanding that they had abſolute power to do all things of themſelves, to command, diſpoſe, recompence, and puniſh, of their own motions: ſince they have ordained that theſe Dignities ſhould make the body of a Senate, the King doth not challenge much right and power over His Nobility, nor over their eſtates, neither hath he any over the Clergy. And though the Kings Authority depends on the Nobility for His election, yet in many things it is abſolute after He is choſen: He appoints the Diets at what time and place He pleaſeth; He chooſeth Lay-Councellors, and nominates the Biſhops, and whom He will have to be His Privy Councel: He is abſolute diſpoſer of the Revenues of the Crown: He is abſolute eſtabliſher of the Decrees of the Diets: It is in His power to advance and reward whom he pleaſeth. He is Lord immediate of His Subjects, but not of His Nobility: He is Soveraign Judge of his Nobility in criminal cauſes. The power of the Nobility daily increaſeth, for that in reſpect of the Kings election, they neither have Law, rule, nor form to do it, neither by writing nor tradition. As the King governs His Subjects which are immediately His with abſolute Authority; ſo the Nobility diſpoſe immediately of their vaſſals, over whom every one hath more than a Regal power, ſo as they intreat them like ſlaves. There be certain men in* Poland *who are called* EARTHLY MESSENGERS *or* Nuntio's, *they are as it were Agents of Juriſdictions or Circles of the Nobility: theſe have a certain Authority, and, as* Bo-

terus

terus *ſaith*, *in the time of their Diets theſe men aſſemble in a place neer to the Senate-Houſe, where they chuſe two Marſhals, by whom (but with a Tribune-like authority) they ſignifie unto the Council what their requeſts are. Not long ſince, their authority and reputation grew ſo mightily, that they now carry themſelves as Heads and Governours, rather than officers and miniſters of the publick decrees of the State: One of the Councel refuſed his Senators place, to become one of theſe officers. Every Palatine, the King requiring it, calls together all the Nobility of His Palatinate; where having propounded unto them the matters whereon they are to treat, and their will being known, they chuſe four or ſix out of the company of the* EARTHLY MESSENGERS; theſe deputies meet and make one body, which they call the order of Knights.

This being of late years the manner and order of the government of *Poland*, it is not poſſible for the *Obſervator* to finde among them that the *whole Community in its underived Majeſty doth ever convene to do Juſtice*: nor any election or repreſentation of the Community, or that the people aſſume its own power to do it ſelf right. The EARTHLY MESSENGERS, though they may be thought to repreſent the Commons, and of late take much upon them, yet they are elected and choſen by the Nobility, as their agents and officers. The Community are either vaſſals to the King, or to the Nobility, and enjoy as little freedom or liberty as any Nation. But it may be ſaid perhaps, that though the Community do not limit the King, yet the Nobility do, and ſo he is a limited Monarchy. The Anſwer is, that in truth, though the

the Nobility at the chuſing of their King do limit his power, and do give him an Oath; yet afterwards they have always a deſire to pleaſe him, and to ſecond his will; and this they are forced to do, to avoid diſcord: for by reaſon of their great power, they are ſubject to great diſſentions, not onely among themſelves, but between them and the order of Knights, which are the *Earthly Meſſengers*: yea, the Provinces are at diſcord one with another: and, as for Religion, the diverſity of Sects in *Poland* breed perpetual jars and hatred among the people, there being as many Sects as in *Amſterdam* it ſelf, or any popular government can deſire. The danger of ſedition is the cauſe, that though the Crown depends on the election of the Nobility; yet they have never rejected the Kings ſucceſſour, or transferred the Realm to any other family, but once, when depoſing *Ladiſlaus* for his idleneſs (whom yet afterward they reſtored) they elected *Wencelaus* King of *Bohemia*. But if the Nobility do agree to hold their King to his conditions, which is, not to conclude any thing but by the advice of his Councel of Nobles, nor to chooſe any wife without their leaves, then it muſt be ſaid to be a Common-weal, not a Royalty; and the King but onely the mouth of the Kingdom, or as Queen *Chriſtina* complained, that *Her Huſband was but the ſhadow of a Soveraign*.

Next, if it be conſidered how the Nobility of *Poland* came to this great power; it was not by any *original contract*, or *popular convention*: for it is ſaid *they have neither Law, Rule, nor Form written or unwritten, for the election of their King*; they may thank the Biſhops and Clergy: for by their holy ad-

admonitions and advice, good and Religious Princes, to ſhew their piety, were firſt brought to *give much of their Rights and Priviledges to their Subjects, devout Kings were meerly cheated of ſome of their Royalties.* What power ſoever general Aſſemblies of the Eſtates claim or exerciſe over and above the bare naked act of Councelling, they were firſt beholding to the Popiſh Clergy for it: it is they firſt brought Parliaments into requeſt and power: I cannot finde in any Kingdom, but onely where Popery hath been, that Parliaments have been of reputation; and in the greateſt times of Superſtition they are firſt mentioned.

As for the Kingdom of *Denmarke*, I read that the Senators, who are all choſen out of the Nobility, and ſeldom exceed the number of 28, with the chief of the Realm, do chuſe their King. They have always in a manner ſet the Kings eldeſt Son upon the Royal Throne. The Nobility of *Denmarke* withſtood the Coronation of *Frederick* 1559, till he ſware not to put any Noble-man to death until he were judged of the Senate; and that all Noble-men ſhould have power of life and death over their Subjects without appeal; and the King to give no Office without conſent of the Councel. There is a Chancelour of the Realm, before whom they do appeal from all the Provinces and Iſlands, and from him to the King himſelf. I hear of nothing in this Kingdom that tends to Popularity; no Aſſembly of the Commons, no elections, or repreſentation of them.

*Sweden* is governed by a King *heretofore elective*, but now made hereditary in *Guſtavus* time: it is divided into Provinces: an appeal lieth from the Vi-

Vicount of every territory to a Soveraign Judge called a *Lamen*; from the *Lamens*, to the Kings Councel; and from this Councel to the King himſelf.

Now let the *Obſervator* bethink himſelf, whether all, or any of theſe three Countries have found out any art at all whereby the *people or community may aſſume its own power*: if neither of theſe Kingdomes have, moſt Countries have not, nay none have. The people or Community in theſe three Realms are as abſolute vaſſals as any in the world; the regulating power, if any be, is in the Nobility: Nor is it ſuch in the Nobility as it makes ſhew for. The election of Kings is rather a Formality, than any real power: for they dare hardly chuſe any but the Heir, or one of the blood Royal: if they ſhould chuſe one among the Nobility, it would prove very factious; if a ſtranger, odious, neither ſafe. For the Government, though the Kings be ſworn to raign according to the Laws, and are not to do any thing without the conſent of their Councel in publick affairs: yet in regard they have power both to advance and reward whom they pleaſe, the Nobility and Senators do comply with their Kings. And *Boterus* concludes of the Kings of *Poland*, who ſeem to be moſt moderated, that *ſuch as is their valour, dexterity, and wiſdome, ſuch is their Power, Authority, and Government.* Alſo *Bodin* ſaith, that *theſe three Kingdoms are States changable and uncertain, as the Nobility is ſtronger than the Prince, or the Prince than the Nobility*; and the people are ſo far from liberty, that he ſaith, *Divers particular Lords exact not onely Cuſtoms, but Tributes alſo*; *which are confirmed and grow ſtronger, both by long preſcription of time, and uſe of Judgments.* The End.

# AN
# ADVERTISEMENT
# TO THE
# JURY-MEN of *ENGLAND*,
# TOUCHING
# WITCHES.

# ADVERTISEMENT
# To the JURY-MEN OF ENGLAND.

THE late Execuon of Witches at the Summer Aſſiſes in Kent, occaſioned this brief Exercitation, which addreſſes it ſelf to ſuch as have not deliberately thought upon the great difficulty in diſcovering, what, or who a Witch is. To have nothing but the publick Faith of the preſent Age, is none of the beſt Evidence, unleſs the univerſality of elder times do concur with theſe Doctrines, which ignorance in the times of darkneſs brought forth, and credulity in theſe days of light hath continued.

Such as ſhall not be pleaſed with this Tractate, are left to their liberty to conſider, whether all thoſe Proofs and Preſumptions number'd up by Mr. Perkins,

*for the Conviction of a Witch, be not all Condemned, or confeſſed by himſelf to be unſufficient or uncertain.*

*He brings no leſs than eighteen ſigns or proofs, whereby a* Witch *may be diſcovered, which are too many to be all true: his ſeven firſt he himſelf confeſſeth to be inſufficient for Conviction of a* Witch; *His eight next proofs (which he ſaith men in place have uſed) he acknowledgeth to be falſe or inſufficient. Thus of his Eighteen proofs, which made a great ſhew, fifteen of them are caſt off by himſelf; there remains then his ſixteenth, which is the Confeſſion of a* Witch; *yet preſently he is forced to yield, That a bare Confeſſion is not a ſufficient proof, and ſo he cometh to his ſeventeenth proof, which is, two credible witneſſes; and he here grants, that the League between the Devil and the* Witch *is cloſely made, and the practices of* Witches *be very ſecret, that hardly a man can be brought, which upon his own knowledge can aver ſuch things. Therefore at laſt, when all other proofs fail, he is forced to fly to his eighteenth proof, and tells us, that yet there is a way to come to the knowledge of a* Witch, *which is, that* Satan *uſeth all means to diſcover a* Witch; *which how it can be well*

*well done, except the Devil be bound over to give in evidence againſt the Witch, cannot be underſtood.*

*And as Mr.* Perkins *weakens and diſcredits all his own proofs, ſo he doth the like for all thoſe of King* James, *who, as I remember, hath but Three Arguments for the diſcovery of a* Witch. *Firſt, the ſecret Mark of a* Witch, *of which Mr.* Perkins *ſaith, it hath no power by Gods Ordinance. Secondly, The diſcovery by a fellow-*Witch; *this Mr.* Perkins *by no means will allow to be a good proof. Thirdly, the ſwimming of a* Witch, *who is to be flung croſs ways into the water, that is, as* Wierus *interprets it, when the Thumb of the right Hand is bound to the great Toe of the left Foot, and the Thumb of the left Hand to the great Toe of the right Foot. Againſt this Tryal by water, together with a diſability in a* Witch *to ſhed Tears, (which King* James *mentions)* Delrio *and Mr.* Perkins *both argue; for it ſeems they both write after King* James, *who put forth his Book of Dæmonologie in his youth, being in* Scotland, *about his age of thirty years.*

*It concerns the people of this Nation to be more diligently inſtructed in the Doctrine of Witch-craft, than thoſe of For-*

*raign Countries, becauſe here they are tyed to a ſtricter or exacter Rule in giving their ſentence than others are: for all of them muſt agree in their Verdict, which in a caſe of extream difficulty is very dangerous; and it is a ſad thing for men to be reduced to that extremity, that they muſt hazard their Conſciences or their Lives.*

# A DIFFERENCE BETWEEN An *Engliſh* and *Hebrew* WITCH.

THE Point in Queſtion is briefly this; Whether ſuch a Witch as is Condemned by the Laws and Statutes of this Land, be one and the ſame with the Witch forbidden by the Law of *Moſes*.

The Witch Condemned by our Statute-law is, 1 *Jacob. Cap.* 12.

One that ſhall uſe, practice, or exerciſe any Invocation or Conjuration of any evil or wicked ſpirit, or conſult, covenant with, entertain or employ, feed or reward any evil or wicked ſpirit, to or for any intent or purpoſe; or take up any dead man, woman, or child, out of his, her, or their grave, or any other place, where the dead body reſteth; or the skin, bone, or other part of any dead perſon, to be employed or uſed in any manner of Witchcraft, Sorcery, Charm or Enchantment; or ſhall uſe, practice, or exerciſe any Witchcraft, Enchantment, Charm,

or Sorcery, whereby any person shall be killed, destroyed, wasted, consumed, pined, or lamed in his or her body, or any part thereof: such Offenders duely and lawfully Convicted and Attainted, shall suffer death.

If any person shall take upon him by Witchcraft, Inchantment, Charm or Sorcery, to tell or declare in what place any Treasure of Gold or Silver should or might be found or had in the Earth, or other secret places, or where Goods, or things lost or stoln should be found or become: Or to the intent to provoke any person to unlawful love, or whereby any Cattle or Goods of any person shall be destroyed, wasted, or impaired; or to destroy or hurt any person, in his, or her body, though the same be not effected, &c. a years Imprisonment, and Pillory, &c. and the second Conviction Death.

*In this Statute, these Points are observable.*

1. That this Statute was first framed in 5. *Eliz.* and onely the penalties here a little altered, and the last clause concerning provoking of persons to love, and destroying of Cattle and Goods, *&c.* is so changed, that I cannot well make sence of it, except it be rectified according to the words of the former Statute which stands repealed.

2. Although the Statute runs altogether in the disjunctive *Or*, and so makes every single crime capital, yet the Judges usually by a favourable interpretation

terpretation, take the disjunctive *Or*, for the copulative *And*; and therefore ordinarily they condemn none for Witches, unleſs they be charged with the Murdering of ſome perſon.

3. This Statute pre-ſuppoſeth that every one knows what a Conjurer, a Witch, an Inchanter, a Charmer, and Sorcerer is, as being to be learned beſt of Divines; and therefore it hath not deſcribed or diſtinguiſhed between them: and yet the Law is very juſt in requiring *a due and lawful conviction.*

*The definition of Witch-craft.*

FOr the better diſcovery of the qualities of theſe crimes, I ſhall ſpend ſome diſcourſe upon the Definition of thoſe Arts by Divines: for both thoſe of the Reformed Churches, as well as theſe of the Roman, in a manner, agree in their definition of the ſin of Witch-craft. I ſhall inſtance in two late Writers, *viz.* Mr. *William Perkins* in his Diſcourſe of Witch-craft, and in *Martin Delrio*, a Jeſuit of *Lorrain*, in his Book of *Magical Diſquiſitions.*

Our Engliſh word *Witch*, is derived from the Dutch word *Wiechelen*, or *Wijchelen*, which doth properly ſignifie *whinying* or *neying* like a Horſe, and doth alſo ſignifie to foretel or prophecy; and *Weicheler* ſignifies a *Southſayer*; for that the *Germans*, from whom our Anceſtors the *Saxons* deſcended, uſually and principally did, as *Tacitus* tells us, *divine and fore-tell things to come, by the whinying and neying of their Horſes. Hinnitu & fremitu* are his words.

For the Definition Mr. *Perkins* ſaith, Cap. 1. *Witch-craft is an Art ſerving for the work-*

*ing of wonders, by the assistance of the Devil, so far as God shall permit.*

*Delrio* defineth it to be *an Art, which by the power of a Contract entred into with the Devil, some wonders are wrought which pass the common understanding of men. Ars qua vi pacti cum Dæmonibus initi mira quædam communem hominum captum superantia officiuntur.* Lib. 1. c. 2.

In these two Definitions, some Points are worth the noting.

1. They both agree in the main Foundation, which is a Contract with the Devil, and therefore Mr. *Perkins* thought it most necessary, that this main point should be proved; to which purpose he promiseth to define a Witch, by *opening the nature of Witch-craft, as it is delivered in the old and new Testament*; and yet after he confesseth a *manifest Covenant is not so fully set down in Scripture*: And out of the *New Testament* he offers no proof at all, though he promised it; nevertheless, he resolves us that a *Covenant is a most evident and certain truth, that may not be called in question.* Cap. 2. Cap. 2.

For proof of a Covenant, he produceth onely one Text out of the old Testament; neither doth he say, that the Text proveth a Contract with the Devil, but onely that it *intimateth* so much: Thus at the first he falls from a proof to an intimation onely. The Text is, *Psal.* 58. *v.* 5. of which his words are these: *Howsoever the common Translation runneth in other terms, yet the words are properly to be read thus: Which heareth not the voice of the mutterer joyning Societies cunningly — the main Foundation of the Charm, Societies* Cap. 2.

*or Confederacies cunningly made, not between man and man, but, as the words import, between the Enchanter and the Devil*, Deut. 18. 11.

*Anſwer.* Though there be neither mention of Spirit or Devil in this Pſalm, yet Mr. *Perkins* would have us believe that there can be no *conjoyning or conſociating* but with the Devil: but Mr. *Ainſworth*, as great a *Rabby* as Mr. *Perkins*, finds other Interpretations of this Text; and though he mentions fellowſhip with the Devil, yet he puts it in the third and laſt place, as the neweſt and lateſt Interpretation: for he teacheth us, that the *Enchanter had his title both in Pſalm* 58. *and in* Deut. 18. *either becauſe he aſſociates Serpents, making them tame and familiar that they hurt not, or becauſe ſuch perſons uſe to bind and tye bonds, or things about the body, to heal or hurt by Sorcery.* Alſo he teacheth us, that a *Charmer* doth joyn or *ſpeak words of a ſtrange language, and without ſence, &c.*

*Delrio* it ſeems puts no confidence in this Text of Mr. *Perkins*, for he doth not cite it to prove a Contract; yet he hath alſo one Text of his own to that purpoſe, it is *Eſay* 28. 15. where it is ſaid, *We have made a Covenant with Death, and with Hell we are at an agreement*; *Percuſſimus fœdus cum morte, & cum inferno fecimus pactum*: and *Delrio* tells us, that *Tho. Aquinas* did apply this Text to Witches, *magis ſatis probabili interpretatione.* Lib. 2. Qu. 4.

*Anſwer.* If this Text be conſidered, it proves nothing at all: for it doth not charge the proud and drunken *Ephraimites*, of whom it is ſpoken, that they had made an agreement with Hell, but it is onely a falſe brag of their own, to juſtifie their wick-

wickedneſs by a lye: for it is not poſſible to make a Covenant with Death, which in it ſelf is nothing but a meer not being; and whereas it is called an agreement with Hell, it may be tranſlated as well, if not better in this place, an *agreement with the Grave*; and ſo the Interlineary Bible hath it; and *Tremelius* and *Junius* render it, *Pepigimus fœdus cum morte, & cum ſepulchro egimus cautum*; which they term a *Thraſonical hyperbole*: and *Deodatus his Italian Bible hath, Habbiamo fatto lega col ſepolcro*; ſo likewiſe the *Spaniſh Bible* tranſlates it, *Concierto tenemos hecho con la muerte, è con la ſepultura bazimos acuerdo.*

It may be wondered that neither Mr. *Perkins* nor the Jeſuit have any other or better Texts to prove this Contract between the Witch and the Devil. But the truth is, it is very little that either of them ſay of this great point, but paſs it over perfunctorily. Perhaps it may be thought that King *James* hath ſaid, or brought more and better proofs in this point; but I do not finde that he doth meddle with it at all, but takes it for granted that if there be Witches, there muſt needs be a Covenant, and ſo leaves it without further proof.

A ſecond note is, that the agreement between the Witch and the Devil they call a Covenant, and yet neither of the parties are any way bound to perform their part; and the Devil, without doubt, notwithſtanding all his craft, hath far the worſt part of the bargain. The bargain runs thus in Mr. *P.* the *Witch as a ſlave binds himſelf by Vow to believe in the Devil, and to give him either Body, or Soul, or both, under*

Cap. 12.

*der his hand-writing, or ſome part of his Blood. The Devil promiſeth to be ready at his vaſſals command to appear in the likeneſs of any Creature, to conſult, and to aid him for the procuring of Pleaſure, Honour, Wealth, or Preferment; to go for him, to carry him any whither, and do any command.* Whereby we ſee the Devil is not to have benefit of his bargain till the Death of the Witch; in the mean time he is to appear always at the Witches command, to go for him, to carry him any whither, and to do any command: which argues the Devil to be the Witches ſlave, and not the Witch the Devils.

Though it be true which *Delrio* affirmeth, *that the Devil is at liberty to perform or break his compact, for that no man can compel him to keep his promiſe*; yet on the other ſide, it is as poſſible for the Witch to fruſtrate the Devils Contract, if he or ſhe have ſo much grace as to repent; the which there may be good cauſe to do, if the Devil be found not to perform his promiſe: Beſides, a Witch may many times require that to be done by the Devil, which God permits not the Devil to do; thus againſt his will the Devil may loſe his credit, and give occaſion of repentance, though he endeavour to the utmoſt of his power to bring to paſs whatſoever he hath promiſed; and ſo fail of the benefit of his bargain, though he have the hand-writing, or ſome part of the blood of the Witch for his ſecurity, or the ſolemnity before witneſſes, as *Delrio* imagineth.

I am certain they will not ſay that Witch-craft is like the ſin againſt the Holy Ghoſt, unpardonable,

ble: for Mr. *Perkins* confeſſeth the contrary, and *Delrio* denies it not; for he allows the *Sacrament of the Euchariſt* to be adminiſtred to a condemned Witch, with this limitation, that there may be about four hours ſpace between the Communion, and the Execution, in which time it may be probably thought that the *Sacramental Species* (as they call it) may be conſumed.

Lib. 5. Sect. 18.

3. *Delrio* in his ſecond Book, and fourth Queſtion, gives this Rule, which he ſaith *is common to all Contracts with the Devil, That firſt they muſt deny the Faith, and Chriſtianiſm, and Obedience to God, and reject the patronage of the Virgin* Mary, *and revile her.* To the ſame purpoſe Mr. *Perkins* affirms that *Witches renounce God and their Baptiſm.* But if this be common to all Contracts with the Devil, it will follow that none can be Witches but ſuch as have firſt been Chriſtians, nay and *Roman Catholiques*, if *Delrio* ſay true; for who elſe can renounce the patronage of the Virgin *Mary?* And what ſhall be ſaid then of all thoſe Idolatrous Nations of *Lapland*, *Finland*, and of divers parts of *Africa*, and many other Heatheniſh Nations, which our Travellers report to be full of Witches? and indeed, what need or benefit can the Devil gain by contracting with thoſe Idolaters, who are ſurer his own, than any Covenant can make them?

4. Whereas it is ſaid that *Witchcraft is an Art working wonders*, it muſt be underſtood that the art muſt be the Witches Art, and not the Devils, otherwiſe it is no Witch-craft, but Devils-craft. It is confeſſed on all hands, that the Witch doth not work the wonder, but the Devil onely.

It

It is a rare Art for a Witch by her Art to be able to do nothing her ſelf, but to command another to practiſe the Art. In other Arts, Mr. *Perkins* confeſſeth *that the Arts Maſter is able by himſelf to practiſe his Art, and to do things belonging thereunto without the help of another; but in this it is otherwiſe* — Cap. 1. Sect. 4. *the power of effecting ſtrange works doth not flow from the skill of the Witch, but is derived wholly from Satan.* To the ſame purpoſe he ſaith, that the *means of working wonders are Charms uſed as a Watch-word to the Devil to cauſe him to work wonders*: Cap. 4. Sect. 1. ſo that the Devil is the worker of the wonder, and the Witch but the Counſellour, Perſwader, or Commander of it, and onely acceſſary before the Fact, and the Devil onely principal. Now the difficulty will be, how the *acceſſary* can be *duely and lawfully convicted and attainted* according as our Statute requires, unleſs the Devil, who is the Principal, be firſt convicted, or at leaſt outlawed; which cannot be, becauſe the Devil can never be lawfully ſummoned according to the rules of our Common-law. For further proof that the Devil is the principal in all ſuch wonders, I ſhall ſhew it by the teſtimony of King *James*, in a caſe of Murther, which is the moſt capital crime our Laws look upon. Firſt, he tells us that *the Devil teaches Witches how to make Pictures of Wax and Clay, that by the roſting thereof the perſons that they bear the Name of may be continually melted, or dried away by continual ſickneſs* — *not that any of theſe means which he teacheth them (except poyſons, which are compoſed of things natural) can of themſelves help*

*any*

*anything to theſe turns they are imployed in.*

Lib.2. Cap.5. Secondly, King *Jame* affirms that *Witches can bewitch, and take the life of Men or Women by roſting of the Pictures, which is very poſſible to their Maſter to perform: for although that inſtrument of Wax have no vertue in the turn doing, yet may he not very well, by that ſame meaſure that his conjured Slave melts that Wax at the fire, may he not I ſay at theſe ſame times, ſubtilly as a ſpirit, ſo weaken and ſcatter the ſpirits of life of the patient, as may make him on the one part for faintneſs to ſweat out the humours of his body; and on the other part, for the not concurring of theſe ſpirits which cauſe his digeſtion, ſo debilitate his ſtomack, that his humour radical continually ſweating out on the one part, and no new good Suck being put in the place thereof for lack of digeſtion on the other, he at laſt ſhall vaniſh away even as his Picture will do at the Fire.* Here we ſee the Picture of Wax, roaſted by the Witch, hath no vertue in the Murdering, but the Devil onely. It is neceſſary in the firſt place that it be duly proved that the party Murther'd be Murthered by the Devil: for it is a ſhame to bely the Devil; and it is not poſſible to be proved, if it be *Subtilely done as a Spirit.*

5. Our Definers of Witch-craft diſpute much, whether the Devil can work a Miracle: they reſolve he can do a *Wonder*, but not a *Miracle*; *Mirum*, but not *Miraculum.* A Miracle, ſaith Mr. *Perkins, is that which is above or againſt nature ſimply; a Wonder is that which proceeds not from the ordinary courſe of nature. Delrio* will have a Miracle to be *præter*, or *ſupra naturæ creatæ vires:* both ſeem to agree in this, that he had need be an admirable

or

or profound Philoſopher, that can diſtinguiſh between a Wonder and a Miracle; it would poſe *Ariſtotle* himſelf, to tell us every thing that can be done by the power of Nature, and what things cannot; for there be daily many things found out, and daily more may be, which our Fore-fathers never knew to be poſſible in Nature. Thoſe that were converted by the Miracles of our Saviour, never ſtayed to enquire of their Philoſophers what the power of Nature was; it was ſufficient to them, when they ſaw things done, the like whereof they had neither ſeen nor heard of, to believe them to be Miracles.

6. It is commonly believed and affirmed by Mr. *Perkins*, that the cauſe which moves the Devil to bargain with a Witch, is a deſire to obtain thereby the Soul and Body of the Witch. But I cannot ſee how this can agree with another Doctrine of his, where he ſaith, *The Precepts of Witch-craft are not delivered indifferently to every Man, but to his own ſubjects the wicked; and not to them all, but to ſpecial and tried ones, whom he moſt betruſteth with his ſecrets, as being the fitteſt to to ſerve his turn, both in reſpect of their willingneſs to learn and practiſe, as alſo for their ability to become Inſtruments of the miſchief he intendeth to others.* All this argues, the end of the Devils rules of Witch-craft is not to gain *Novices* for new Subjects, but to make uſe of old ones to ſerve his turn.

7. The laſt clauſe of Mr. *Perkins* definition is, that *Witch-craft doth work wonders ſo far as God ſhall permit.* I ſhould here deſire to have known whether Mr. *Perkins* had thought that God doth permit farther power to the Devil upon his contracting with

with the Witch, than he had before the Contract: for if the Devil had the ſame permiſſion before the Contract, then he doth no more miſchief upon the Contract, than he would have gladly done before, ſeeing, as Mr. *Perkins* ſaith, *The Devils malice towards all Men is of ſo high a degree, that he cannot endure they ſhould enjoy the World, or the benefits of this life (if it were poſſible) ſo much as one hour.* But yet afterward I finde Maſter *Perkins* is more favourable to the Devil, where he writes, *that if the Devil were not ſtirred up and provoked by the Witch, he would never do ſo much hurt as he doth.*

Cap. 7.

*Of the Diſcerning and Diſcovery of a Witch.*

Cap. 7. Sect. 1. A *Magiſtrate*, ſaith Mr. *Perkins*, *may not take upon him to examine whom and how he willeth of any Crime, nor to proceed upon ſlight cauſes, or to ſhew his Authority, or upon ſiniſter reſpects, or to revenge his malice, or to bring parties into danger and ſuſpition; but he muſt proceed upon ſpecial preſumptions.*

Cap. 7. Sect. 2. He calls thoſe *preſumptions, which do at leaſt probably and conjecturally note one to be a Witch, and are certain ſigns whereby the Witch may be diſcovered.* I cannot but wonder that Mr. *Perkins* ſhould ſay, that preſumptions do at leaſt probably and conjecturally note, and are certain ſigns to diſcover a Witch; when he confeſſeth, that though *preſumptions give occaſion to examine, yet they are no ſufficient cauſes of conviction: and though preſumptions be never ſo ſtrong, yet they are not proofs ſufficient for Conviction, but onely for Examina-*

*mination.* Therefore no credit is to be given to thoſe preſumptions he reckons up. 1. For common fame, *it falls out many times*, ſaith he, *that the innocent may be ſuſpected, and ſome of the better ſort notoriouſly defamed.* 2. *The teſtimony of a fellow-Witch*, he confeſſeth, *doth not probably note one to be a Witch.* The like may be ſaid of his third and fourth preſumption, *if after curſing, or quarrelling, or threatning, there follow preſent miſchief.* And the fifth preſumption is more frivolous, which is, *if the party be the Son or Daughter, or Servant, or Friend, neer neighbour, or old companion of a Witch.* The ſixth preſumption Mr. *Perkins* dares not, or is loath to own, but ſaith, *Some add, if the party ſuſpected have the Devils Mark; and yet he reſolves, if ſuch a Mark be deſcried, whereof no evident reaſon in nature can be given, the Magiſtrate may cauſe ſuch to be examined, or take the matter into his own hands, that the truth may appear*; but he doth not teach how the truth may be made to appear. The laſt preſumption he names, is, *if the party examined be unconſtant, or contrary to himſelf*; here he confeſſeth, *a good man may be fearful in a good cauſe, ſometimes by nature, ſometimes in regard of the preſence of the Judge, or the greatneſs of the Audience; ſome may be ſuddenly taken, and others want that liberty of ſpeech which other men have.*

Touching Examination, Mr. *Perkins* names two kinds of proceedings, either by *ſimple Queſtion*, or *by Torture: Torture, when beſides the enquiry by words, the Magiſtrate uſeth the Rack, or ſome other violent means to urge Confeſſion*; this he ſaith, *may be lawfully uſed, howbeit not in every caſe, but onely upon ſtrong and great preſumptions, and when the party is obſtinate.* Here it may be noted, that it is not

lawful for any perſon, but the Judge onely, to allow Torture: ſuſpitious Neighbours may not, of their own heads, uſe either Threats, Terrors, or Tortures. I know not any one of thoſe preſumptions before-cited, to be ſufficient to warrant a Magiſtrate to uſe Torture; or whether when the party conſtantly denies the Fact, it muſt be counted obſtinacy. In caſe of Treaſon ſometimes, when the main Fact hath been either confeſſed, or by ſome infallible proofs manifeſted, the Magiſtrate, for a farther diſcovery of ſome circumſtance of the Time, the Place, and the Perſons, or the like, have made uſe of the Rack: and yet that kind of torture hath not been of antient uſage in this Kingdom; for if my memory fail not, I have read, that the Rack hath been called *the Duke of* Exeters *Daughter, and was firſt uſed about* Hen. *6. days.*

From preſumptions, Mr. *Perkins* proceeds to proofs of a Witch; and here he hath a neat diſtinction of proofs, *leſs ſufficient*, or *more ſufficient*; by leſs ſufficient he meaneth inſufficient, but gives them this mild and ſtrange phraſe of leſs ſufficient, that it may not diſpleaſe ſuch friends (as I conceive) allow thoſe leſs ſufficient proofs for ſufficient, though he reckons them for no better than Witch-craft. Thoſe unſufficient ſufficient proofs are weaker and worſe than his preſumptions, which he confeſſeth are no proofs at all; yet we muſt reckon them up. His firſt leſs ſufficient proof is, *The antient trial by taking red-hot Irons, or putting the hand in hot ſcalding water*; this, he ſaith, *hath been condemned for Diabolical and wicked, as in truth it is: for an innocent man may thereby be condemned, and a rank Witch ſcape unpuniſhed.* A ſecond inſufficient proof is, *Scratching*

*of*

*of the ſuſpected party, and the preſent recovery thereupon.* A third is, *the burning the thing bewitched, as a Hog, an Ox, or other Creature, it is imagined a forcible means to cauſe the Witch to diſcover her ſelf.* A fourth, *is the burning the Thatch of the ſuſpected parties Houſe.* The fifth leſs ſufficient proof is, *the binding of the party hand and foot, and caſting croſs-ways into the water; if ſhe ſinks, ſhe is counted innocent; if ſhe float on the water and ſink not, ſhe is taken for a Witch, convicted, and puniſhed.* The *Germans* uſed this Tryal by cold water; and it was imagined, that the Devil being moſt light, as participating more of Air than of Water, would hold them up above the water, either by putting himſelf under the Witch, and lifting her up, as it were with his back, or by uniting himſelf, and poſſeſſing her whole body.

All theſe leſs ſufficient proofs, ſaith Mr. *Perkins, are ſo far from being ſufficient, that ſome of them, if not all, are after a ſort practices of Witch-craft, having no power by Gods Ordinance.* Hereby he condemns point-blank King *James*'s judgment, as ſavouring of Witchraft, in allowing of the Tryal of a Witch by ſwimming as a principal proof. And as I take it, he condemns himſelf alſo, except he can find any Ordinance of God, that the having of an incurable and inſenſible mark or ſore, ſhall be a preſumption, or certain ſign of a Witch.

A ſixth leſs ſufficient proof, is the *Teſtimony of a Wizard, Witch, or cunning man, who is gone or ſent unto, and informs that he can ſhew in a glaſs the Face of the Witch.* This accuſation of a Witch by another Witch, Mr. *Perkins denies to be ſufficient; and he puts this caſe: If the Devil appear to a grand Ju-*

*ry, in the likeneſs of ſome known man, and offer to take his Oath that the perſon in queſtion is a Witch, ſhould the Enqueſt receive his Oath or accuſation to condemn the party? He anſwers, Surely no; and yet that is as much as the Teſtimony of another Witch, who onely by the help of the Devil revealeth the Witch: if this ſhould be taken for a ſufficient proof, the Devil would not leave one good man alive in the world.*

This diſcrediting of the Teſtimony of a Witch, takes away the other (for he hath but two) of King *James* main proofs for the diſcovery of a Witch; for he ſaith, *Who but Witches can be provers, and ſo witneſſes of the doings of Witches?* and to the ſame purpoſe Mr. *Perkins* himſelf conſeſſeth, that the *Precepts of Witch-craft are not delivered, but to the Devils own Subjects, the wicked.*

A ſeventh leſs ſufficient proof is, *when a man in open Court affirms, ſuch a one fell out with me, and curſed me, threatning I ſhould ſmart for it in my perſon or goods; upon theſe threats, ſuch Evils and Loſſes preſently befel me; this is no ſure ground for Conviction*, ſaith Mr. *Perkins*, *for it pleaſeth God many times to lay his Hands upon mens perſons and goods, without the procurement of Witches*; and yet ſaith Mr. *Perkins*, *Experience ſhews, that ignorant people will make ſtrong proofs of ſuch preſumptions, whereupon ſometimes Jurors do give their Verdict againſt parties innocent.*

The laſt leſs ſufficient proof is, *if a man being ſick, upon ſuſpition will take it on his death, that ſuch a one hath bewitched him, it is of no moment*, ſaith Mr. *Perkins*; *it is but the ſuſpition of one man for himſelf, and is of no more force than another mans word againſt him.*

*All theſe proofs*, ſaith Mr. *Perkins*, *which men in place have ordinarily uſed, be either falſe or inſufficient ſigns.* At

At the laſt Mr. *Perkins* comes to his *more ſufficient proofs*, which are in all but two. The confeſſion of the Witch, or the proof of two witneſſes. Againſt the confeſſion of a Witch, Mr. *Perkins* confeſſeth, *it is objected, that one may confeſs againſt himſelf an untruth, being urged by force or threatning, or by deſire upon ſome grief to be out of the World; or at leaſt being in trouble, and perſwaded it is the beſt courſe to ſave their lives and obtain their liberty, they may upon ſimplicity be induced to confeſs that they never did, even againſt themſelves.* The truth of this Allegation Mr. *Perkins* doth not deny, but grants it, in that his Anſwer is, *That he doth not ſay a bare Confeſſion is ſufficient, but a Confeſſion after due Examination taken upon pregnant preſumptions.* But if a bare confeſſion be not a ſufficient proof, a pregnant preſumption can never make it ſuch; or if it could, then it would not be a ſufficient proof. For the farther weakning of the confeſſion of a ſuſpected Witch, we may remember what Mr. *Perkins* hath formerly anſwered, when it was alleadged, that *upon a melancholy humour, many confeſs of themſelves things falſe and impoſſible, That they are carried through the Air in a moment, that they paſs through key-holes and cleffs of Doors; that they be ſometimes turn'd into Cats, Hares, and other Creatures, and ſuch like; all which are meer fables, and things impoſſible.* Here Mr. *Perkins* anſwers, that *when Witches begin to make a League, they are ſober and ſound in underſtanding; but after they be once in the League, their reaſon and underſtanding may be depraved, memory weakned, and all the powers of their Soul blemiſhed; they*

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*are deluded, and ſo intoxicated, that they will run into a thouſand of phantaſtical imaginations, holding themſelves to be transformed into the ſhapes of other Creatures, to be tranſported in the Air, to do many ſtrange things which in truth they do not.*

Now Mr. *Perkins* will confeſs, that the Examination and Confeſſion of a ſuſpected Witch, is always after ſuch time as her Covenant is made; when ſhe is by his Confeſſion deluded, and not fit to give teſtimony againſt her ſelf.

His ſecond *more ſufficient proof* (he ſaith, *if the party will not confeſs, as commonly it falleth out*) *is two witneſſes avouching upon their own knowledge, either that the party accuſed hath made League with the Devil, or hath done ſome known practices of Witch-craft, or hath invocated the Devil, or deſired his help.* But if every man that hath invocated the Devil, or deſired his help, muſt have formerly made a League with him, then whole Nations are every man of them Witches; which I think none will ſay.

As for the League, and proof of Witchraft, Mr. *Perkins* confeſſeth, *Some may ſay, If theſe be the onely ſtrong proofs for the Conviction of a Witch, it will be then impoſſible to put any one to death; becauſe the League with Satan is cloſely made, and the practices of Witch-craft are alſo very ſecret, and hardly can a man be brought, which upon his own knowledge can aver ſuch things.* To this Mr. *Perkins* anſwer is a confeſſion: that *howſoever the ground and practice be ſecret, and be to many unknown, yet there is a way to come to the knowledge thereof. — Satan endeavoreth the diſcovery, and uſeth all means to diſcloſe Witches.* This means he ſpeaks of ſhould be in the power of the Judge, or elſe it is no help for the Diſcovery of

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a Witch, but onely when the Devil pleaſeth. I do not find he proves that it is uſual with Satan to endeavour any ſuch Diſcovery; neither do I ſee how it is practicable by the Devil: for either he muſt do it by his own relation or report; which as it cannot be proved he ever did, ſo it is vain, and to no purpoſe if he do it; for Mr. *Perkins* hath diſcredited the teſtimony of the Devil, as invalid, and of no force for conviction: or elſe the Devil muſt diſcover it by ſome ſecond means; and if there had been any ſuch ſecond means uſual, Mr. *Perkins* would have taught us what they are, and not have left us onely to his two more ſufficient proofs, which he confeſſeth are not infallible.

King *James* tells us, that the *Devils firſt diſcovering of himſelf for the gaining of a Witch, is either upon their walking ſolitarily in the Fields, or elſe lying pauſing in their bed, but always without the company of any other; and at the making of Circles and Conjurations, none of that craft will permit any others to behold*; when the Devil and his Subjects are thus cloſe and ſecret in their actions, it cannot be imagined that he will uſe all means to diſcover his moſt ſpecial and truſtieſt Subjects: and though Mr. *Perkins* tells us, that *by vertue of the Precontract, the Devil is cock-ſure of his inſtruments*; yet within a few lines he changeth his note, and ſaith, *Though he have good hope of them, yet he is not certain of their continuance, becauſe ſome by the mercy of God have been reclaimed and freed from his Covenant.* Beſides, he confeſſeth, *the Devil ſuffereth ſome to live long undiſcloſed, that they may exerciſe the greater meaſure of his malice in the world.* It remains

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mains, that if the two true proofs of Mr. *Perkins*, which are the Witches Confeſſion, or ſufficient witneſſes, fail, *we have not warrant*, as he ſaith, *in the word, to put ſuch an one to death.*

I conclude this point in the words of Mr. *Perkins*; *I adviſe all Jurors, that as they be diligent in the zeal of Gods glory, ſo they would be careful what they do, and not to condemn any party ſuſpected upon bare preſumptions, without ſound and ſufficient proofs, that they be not guilty through their own raſhneſs, of ſhedding innocent blood.*

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Of

# *Of the Hebrew Witch.*

IN *Deut.* 18. The Witch is named with divers other ſorts of ſuch as uſed the like unlawfull Arts; as the Diviner, the Obſerver of times, an Inchanter, a Charmer, a Conſulter with a familiar Spirit, a Wiſard, or a Necromancer. The Text addeth, *All that do theſe things are an abomination to the Lord, and becauſe of theſe abominations, the Lord thy God doth drive them* [the Nations] *out from before thee.* If we deſire to know what thoſe abominations of the Nations were, we are told in general in the 14. Verſe of the ſame Chapter: *Theſe Nations hearkened unto obſervers of times, and unto Diviners.* There is no other crime in this Chapter laid to the charge of all, or any of theſe practiſers of ſuch unlawful Arts, but of *lying Propheſies*; and therefore the Text addeth, *The Lord thy God will raiſe up unto thee a Prophet from the midſt of thee, of thy Brethren, like unto me, unto him ſhall ye hearken, and not to the Diviners, Wiſards, Charmers,* &c.

Setting aſide the caſe of *Job* (wherein God gave a ſpecial and extraordinary Commiſſion) I do not finde in Scripture that the Devil, or Witch, or any other, had power ordinarily permitted them, either to kill or hurt any man, or to meddle with the Goods of any: for though, for the trial of the hearts of men, God doth permit the Devil ordinarily to tempt them; yet he hath no Com-

Commiſſion to deſtroy the Lives or Goods of men; it is little leſs than blaſphemy to ſay any ſuch thing of the admirable providence of God, whereby he preſerves all his Creatures.

It was crime ſufficient for all thoſe practicers of unlawful Arts, to delude the people with falſe and lying Propheſies, thereby to make them forget to depend upon God, and *to have their Souls turn after ſuch as have Familiar Spirits, and after Wiſards, to go a whoring after them*, as the Lord ſaith, *Levit.* 20.6. This ſpiritual whoredome is flat Idolatry, in the common phraſe of the Old Teſtament; and thoſe that be enticers to it, thereby endeavour to deſtroy the Souls of the People, and are by many degrees more worthy of death, than thoſe that onely deſtroy the Bodies or Goods of men.

If there were a Law that every one ſhould be put to Death, or puniſhed, that ſhould adviſedly endeavour to perſwade men that they are skilful in thoſe forbidden Arts, or in foretelling of things to come, or that they have contracted with the Devil, and can thereby murther or deſtroy mens Goods; I ſhould never deny ſuch a Law to be moſt conſonant and agreeing with the Law of *Moſes*.

But becauſe I may be thought by ſome a favourer of theſe forbidden Arts, through want of underſtanding the Scripture about the quality of them; I have made choice of a Man who is no friend to Witches, and whoſe learning in this point

point will not be denied. In his own words I ſhall ſet down, what either out of the Hebrew Names of thoſe prohibited Arts, or out of the expoſition of the Jewiſh Doctors can be gathered for the underſtanding of them.

*A Diviner, in Hebrew*, a Foreſeer, or Preſager, a Foreteller of things to come, as doth a Prophet —The Hebrews take a Diviner to be one that doth things whereby he may foretel things to come, and ſay, Such a thing ſhall be, or not be, or ſay, It is good to do ſuch a thing —The means of Divining; ſome doing it with Sand, ſome with Stones, ſome by lying down on the Ground, ſome with Iron, ſome with a Staff —He that asked of a Diviner, is chaſtiſed with ſtripes. *Ainſworth* upon *Deut.*18.

2. *An obſerver of times*, or Soothſayer, an Obſerver of the Clouds, a Planetary, or an obſerver of the flying of Fowls, an Augur. As the Diviners were carried much by inward and Spiritual Motions, ſo theſe by outward Obſervations in the Creatures. The Hebrews ſay, they were ſuch as did ſet times for the doing of things, ſaying, Such a day is good, and ſuch a day is naught.

3. *An Obſerver of Fortunes*, one that curiouſly ſearcheth ſigns of good or evil luck, which are learned by Experience: the *Hebrew* is, to finde out by Experience; Whereupon the word here uſed is one that too curiouſly obſerveth, and abuſeth things that do fall out, as lucky or unlucky

lucky. The Hebrews deſcribe it thus, as if one ſhould ſay, Becauſe the morſel of Bread is fallen out of my mouth, or my Staff out of my hand, I will not go to ſuch a place: becauſe a Fox paſſed by on my right hand, I will not go out of my Houſe this day. Our new Tranſlation renders this word an Inchanter.

4. *A Witch*, a Sorcerer, ſuch as do bewitch the Senſes or minds of Men, by changing the forms of things to another hew. The *Hebrew* word for a Witch properly ſignifies a Jugler, and is derived from a word which ſignifies *changing or turning*; and *Moſes* teacheth, *Exod.*7. that Witches wrought by Enchantments, that is, *by ſecret Sleights, Juglings, Cloſe conveyance, or of Gliſtering like the flame of Fire, or a Sword, wherewith Mens Eyes were dazled.*

5. *A Charmer*, or one that conjureth Conjurations; the *Hebrew* ſignifies *conjoyning or conſociating* — The Charmer is ſaid to be he, that ſpeaketh words of a ſtrange Language, and without ſenſe; that if one ſay ſo or ſo unto a Serpent, it cannot hurt him; he that whiſpereth over a wound, or that readeth over an Infant that it may not be frighted, or layeth the Bible upon a Child that it may ſleep.

6. *A Wiſard* or cunning Man, in Hebrew named of his knowledge or cunning — The *Hebrews* deſcribe him thus, That he put in his mouth a bone of a Bird, and burned incenſe, and did other things until he fell down with ſhame, and ſpake

ſpake with his mouth things that were to come to paſs.

7. *A Necromancer*, one that ſeeketh unto the Dead: of him they ſay, he made himſelf hungry, and went and lodged among the Graves, that the dead might come unto him in a Dream, and make known unto him that which he asked of him; and others there were that clad themſelves with Cloaths for that purpoſe, and ſpake certain words, and burned Incenſe, and ſlept by themſelves; that ſuch a dead perſon might come and talk with them in a dream.

8. Laſtly, *The Conſulter with Familiar Spirits*, in Hebrew, a *Conſulter with Ob*, applied here to Magitians, who poſſeſſed with an evil Spirit, ſpake with a hollow voice as out of a bottle. —The *Hebrews* explain it thus, That he which had a Familiar ſpirit ſtood and burned Incenſe, and held a rod of Mirtle-tree in his hand, and waved it, and ſpake certain words in ſecret, until he that enquired did hear one ſpeak unto him, and anſwer him touching that he enquired, with words from under the Earth, with a very low voice, *&c.* Likewiſe, one took a dead mans Skull and burnt Incenſe thereto, and inchanted thereby till he heard a very low voice, *&c.* This Text in our Engliſh Tranſlation being expounded a Familiar Spirit, and ſeconded by the Hiſtory of the Woman of *Endor*, may ſeem a ſtrong evidence that the Devil covenanted with Witches: but if all be granted that can be deſired, that this Familiar Spirit ſignifies a Devil, yet it comes not home to prove the main point; for it is no proof that

that the Familiar Spirit enter'd upon Covenant, or had or could give power to others to kill the perſons, or deſtroy the Goods of others. King *James* confeſſeth, *the Devil can make ſome to be poſſeſſed, and ſo become very Dæmoniaques; and that ſhe who had the ſpirit of* Python *in* Acts 16. *whereby ſhe conqueſted ſuch gain to her Maſter; that Spirit was not of her own raiſing or commanding, as ſhe pleaſed to appoint, but ſpake by her Tongue as well privately as publickly.* We do not find the *Pythoneſſe* condemned or reproved, but the unclean Spirit commanded *in the Name of Jeſus Chriſt to come out of her. The Child which was* too young to make a Covenant with the Devil, was *poſſeſſed with a dumb and deaf Spirit, and the Devil charged to come out, and enter no more into him,* Mark 9. *A Daughter of Abraham* (that is, of the Faith of *Abraham*) *was troubled with a ſpirit of infirmity eighteen years, and bowed together that ſhe could not lift her ſelf up,* Luke 13. 10, 16.

It is obſervable, that in *Deut.* 18. where all the unlawful Arts are reckoned up, and moſt fully prohibited, the crime of them is charged upon the practiſers of thoſe Arts; but the crime of having a Familiar Spirit is not there condemned, but the conſulter of a Familiar Spirit; ſo in *Levit.* 19. 31. the prohibition is, *Regard not them that have Familiar Spirits*; and ſo in *Levit.* 20. 6. *The Soul that turneth after ſuch as have Familiar Spirits*; ſo that it was not the having, but the conſulting, was condemned.

If we draw nearer to the words of the Text, it will

will be found, that theſe words, *a Conſulter with a Familiar Spirit*, are no other than a *Conſulter with Ob*; where the queſtion will be what *Ob* ſignifieth. Expoſitors agree, that originally *Ob* ſignifieth a Bottle, and they ſay is applyed here to one poſſeſſed with an evil Spirit, and ſpeaketh with a hollow voice as out of a Bottle: but for this I find no proof they bring out of Scripture, that ſaith, or expoundeth that *Ob* ſignifieth one poſſeſſed with a Familiar Spirit in the Belly; the onely proof is, that the Greek Interpreters of the Bible Tranſlate it *Engaſtromuthi*, which is, ſpeaking in the Belly; and the word anciently, and long before the time of the Septuagint Tranſlators, was properly uſed for one that had the cunning or ſlight to ſhut his mouth, and ſeem to ſpeak with his Belly; which that it can be done without the help of a Familiar Spirit, experience of this Age ſheweth in an Iriſhman. We do not find it ſaid, that the Woman of *Endor* did fore-tell any thing to *Saul*, by the hollow voice of a Familiar Spirit in her Belly; neither did *Saul* require, nor the Woman promiſe ſo to anſwer him; but he required, *Bring me him up who I ſhall name unto thee; and ſhe undertook to do it*; which argues a deſire in *Saul* to conſult with the dead, which is called *Necromancy*, or *conſulting with the dead.*

But it hath been ſaid, ſhe raiſed the Devil in *Samuels* likeneſs, yet there is no ſuch thing ſaid in the Text; when the Woman went about her work, the firſt thing noted is, that *when ſhe ſaw* Samuel, *ſhe cryed out with a loud voice*: An Argument ſhe was frighted with ſeeing ſomething ſhe did not expect

to

to ſee: it is not ſaid, that when ſhe knew *Saul*, but when ſhe ſaw *Samuel*, *ſhe cryed out with a lowd voice*; when ſhe knew *Saul*, ſhe had no reaſon to be afraid, but rather comforted, for that ſhe had his Oath for her ſecurity.

It may well be, that if either ſhe had a Familiar Spirit, or the Art of hollow-ſpeaking, her intention was to deceive *Saul*, and by her ſecret voice to have made him believe, that *Samuel* in another room had anſwered him; for it appears that *Saul* was not in the place where ſhe made a ſhew of raiſing *Samuel*: for when ſhe cryed out with a loud voice, *Saul* comforted her, and bid her not be afraid, and asked her *what ſhe ſaw? and what form is he of?* which queſtions need not have been, if *Saul* had been in the Chamber with the Witch. King *James* confeſſeth, that *Saul was in another chamber at the conjuration*; and it is likely the woman had told *Saul* ſhe had ſeen ſome fearful ſight, which made him ask her what ſhe ſaw? and her anſwer was, *ſhe ſaw gods aſcending out of the Earth*; and it may be underſtood, that Angels waited upon *Samuel*, who was raiſed by God, and not any Puppets or Devils that ſhe conjured up; otherwiſe, the words may be Tranſlated as *Deodat* in the Margent of his *Italian* Bible hath it, *She ſaw a Man of Majeſty or Divine Authority aſcend, un' huomo di Majeſta è d' Authorita Divina*, which well anſwers the queſtion of what form is he of? which is in the ſingular, not in the plural number.

We find it ſaid in *Eſay* 29. 4. *Thou ſhalt be brought down, and ſhalt ſpeak out of the ground, and*

*and thy ſpeech ſhall be low out of the duſt, and thy voice ſhall be as one that hath a Fimiliar Spirit out of the ground, and thy ſpeech ſhall wiſper out of the Earth*; which argues, the voice of *Ob* was out of the Earth, rather than out of the Belly; and ſo the *Hebrew* Expoſition which I cited before affirms. Some learned have been of Opinion that a natural reaſon may be given why in ſome places certain exhalations out of the earth may give to ſome a prophetical ſpirit. Add hereunto, that ſome of the Heathen Oracles were ſaid to ſpeak out of the Earth: and among thoſe five ſorts of *Necromancy*, mentioned by Doctor *Reynolds*, in his 76 Lecture of his cenſure of the *Apocryphals*, not any of them is ſaid to have any Spirit in their Belly. The Romaniſts, who are all great affirmers of the power of Witches, agree, that the ſoul of *Samuel* was ſent by God to the Woman of *Endor*: to this not onely *Delrio*, but *Bellarmine* before him agrees. That true *Samuel* did appear as ſent by God, as he ſent *Elias* to *Ochoſias King of Iſrael, who being ſick ſent to conſult with Beelzebub the God of Ecbron*, may appear, for that *Samuel* is ſo true and certain in his prediction to *Saul*; which no Witch, no Devil could ever have told: for though the Wiſdome and Experience of the Devil do enable him to conjecture probably of many events, yet poſitively to ſay, *To morrow thou and thy Sons ſhall die*, is more than naturally the Devil could know.

Mr. *Perkins* confeſſeth the Devil could not foretel the exact time of *Sauls* death; and therefore he anſwers, that God revealed to the Devil as

his Inſtrument *Sauls* overthrow, by which means, and no other, the Devil was enabled to foretel the death of *Saul*. Here Mr. *Perkins* proves not that Satan was appointed by God to work *Sauls* overthrow, or that it was made known to him when it ſhould be done.

As the reſt of the Speech of *Samuel* is true, ſo theſe words of his, *Why haſt thou diſquieted me to bring me up?* may be alſo true; which cannot be, if it be ſpoken by the Devil; or why ſhould the Devil tell truths in all other things elſe, and lie onely in this, I know no reaſon. Doctor *Reynolds* preſſeth theſe words againſt the appearing of *Samuel*, thus: *If Samuel had ſaid them, he had lied; but Samuel could not lie, for Samuel could not be diſquieted, nor raiſed by Saul.* It is true, God onely raiſed *Samuel effectually*, but *occaſionally Saul* might raiſe him. But, ſaith Doctor *Reynolds*, though Saul *was the occaſion, yet* Samuel *could not truly ſay that* Saul *had diſquieted him; for bleſſed are they that die in the Lord, ſaith the Spirit, becauſe they reſt from their labours; and* Samuel *was no more to be diſquieted (if he were ſent by God) than* Moſes *and* Elias *were when they appeared to ſhew the Glory of Chriſt, Mat.* 17. Anſwer. It did not diſpleaſe *Samuel* to be employed in the Office of an Angel, but he obeyed God gladly; yet ſince the occaſion of his appearing diſpleaſed God, it might for that cauſe diſpleaſe alſo *Samuel*. Beſides, we need not underſtand the diſquieting of *Samuels* mind, but of his body, by not ſuffering it to reſt in peace after death, according to the common and uſual condition of Mankind: this ſenſe the Ori-

Original will well bear. Again, it cannot be believed that the Devil would ever have preached ſo Divine and excellent a Sermon to *Saul*, which was able to have converted, and brought him to Repentance; this was not the way for the devil to bring either *Saul* or the woman to renounce God. Laſtly, the Text doth not ſay that the woman raiſed *Samuel*; yet it calls him *Samuel*, and ſaith that *Saul perceived or underſtood that it was Samuel.*

Mr. *Perkins* & many others eſteem *Balaam* to have been a Witch or Conjurer, but I find no ſuch thing in the Text; when he was required to curſe the people of *Iſrael*, his anſwer was, *I will bring you word as the Lord ſhall ſpeak unto me*, Numb. 22. 8. and God came unto *Balaam* in *v.* 9. and in *v.* 13. *Balaam* ſaith, *The Lord refuſeth to give me leave*; and when *Balak* ſent a ſecond time, his anſwer was, If *Balak would give me his houſe full of ſilver and Gold, I cannot go beyond the word of the Lord my God, to do leſs or more.* In *v.* 20. God cometh to *Balaam* and ſaid, If *the men come to call thee, go; but yet the words which I ſhall ſay unto thee, that ſhalt thou do.* And when *Balaam* came before *Balak* he ſaid, *v.* 38. *Lo I am come unto thee, have I now any power at all to ſay any thing? the word which God putteth into my mouth, that ſhall I ſpeak*: and in the 23. Chap. v. 18. *Balaam* ſaith, *How ſhall I curſe whom God hath not curſed?* and in v. 12. he ſaith, *Muſt I not take heed to ſpeak that which the Lord hath put into my mouth?* Theſe places laid together, prove *Balaam* to have been a true Prophet of the Lord; and he propheſied nothing contrary to the Lords command, therefore St. *Peter* calls him a Prophet.

Nevertheleſs it is true, that *Balaam* ſinned notoriouſly, though not by being a Witch or Conjurer, or a falſe Prophet; his faults were, that when God had told him he ſhould not go to *Balak*, yet in his covetous heart he deſired to go, being tempted with the rewards of Divination, and promiſe of promotion; ſo that upon a ſecond Meſſage from *Balak* he ſtayed the Meſſengers to ſee if God would ſuffer him to go; wherefore the Lord in his anger ſent *Balaam*. Alſo when God had told *Balaam* that he would bleſs *Iſrael*, yet *Balaam* did ſtrive to tempt God, and by ſeveral Altars and Sacrifices to change the mind of God. Again, when *Balaam* ſaw God immutable in bleſſing *Iſrael*, he taught *Balak to lay a ſtumbling-block before the Sons of Iſrael, to eat things ſacrificed to Idols, and to commit Fornication*, *Rev.*2.14. Whereas it is ſaid that *Balaam went not up as other times to ſeek for Enchantments*, *Num.* 24.2. the Original is, *to meet Divinations*, that is, he did not go ſeek the Lord by Sacrifices, as he did, *Numb.* 23.3.15.

An exact difference between all thoſe Arts prohibited in *Deut.* no man I think can give; that in ſome they did agree, and in others differed, ſeems probable. That they were all lying and falſe Prophets, though in ſeveral ways, I think none can deny. That they differed in their degrees of puniſhments is poſſible: there are but three ſorts that can be proved were to be put to death, *viz.* the Witch, the Familiar Spirit, the Wiſard. As for the Witch, there hath been ſome doubt made of it. The *Hebrew* Doctors that were skild

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in the Laws of *Moſes*, obſerve, that whereſoever one was to die by their Law, the Law always did run in an *affirmative precept*; as, the Man ſhall be ſtoned, ſhall die, ſhall be put to death, or the like; but in this text, and no where elſe in Scripture, the ſentence is onely a *Prohibition negative*, *Thou ſhalt not ſuffer a Witch to live*, and not, Thou ſhalt put her to death, or ſtone her, or the like. Hence ſome have been of Opinion, that not to ſuffer a Witch to live, was meant not to relieve or maintain her by running after her, and rewarding her. The *Hebrews* ſeem to have two ſorts of Witches, ſome that did hurt, others that did hold the Eyes, that is, by jugling and ſlights deceived Mens ſenſes. The firſt they ſay was to be ſtoned, the other, which according to the proper notation of the word was the true Witch, was onely to be beaten.

The Septuagint have tranſlated a Witch, an Apothecary, a Druggiſter, one that compounds poyſons; and ſo the Latin word for a Witch is *veneſica*, a maker of poyſons: if any ſuch there ever were, or be, that by the help of the Devil do poyſon, ſuch a one is to be put to death, though there be no Covenant with the Devil, becauſe ſhe is an Actor and principal her ſelf, not by any wonder wrought by the Devil, but by the natural or occult property of the Poyſon.

*For the time of Chriſt*, ſaith Mr. *Perkins*, *though there be no particular mention made of any ſuch Witch, yet thence it followeth not that there were none, for all things that then hapned are not Recorded, and I would fain*

*fain know of the chief Patrons of them, whether thoſe perſons poſſeſſed with the Devil, and troubled with ſtrange Diſeaſes, whom Chriſt healed, were not bewitched with ſome ſuch people as our Witches are? if they ſay no, let them if they can prove the contrary.*

Here it may be thought that Mr. *Perkins* puts his Adverſaries to a great pinch; but it doth not prove ſo: for the Queſtion being onely whether thoſe that were poſſeſſed in our Saviours Time were bewitched; The Oppoſers of Mr. *Perkins* ſay they were not bewitched: but if he or any other, ſay they, were, the Proof will reſt wholly on him or them to make good their *Affirmative*; it cannot in reaſon be expected that his Adverſaries ſhould prove the *Negative*; it is againſt the Rules of Diſputation to require it.

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*FINIS.*

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